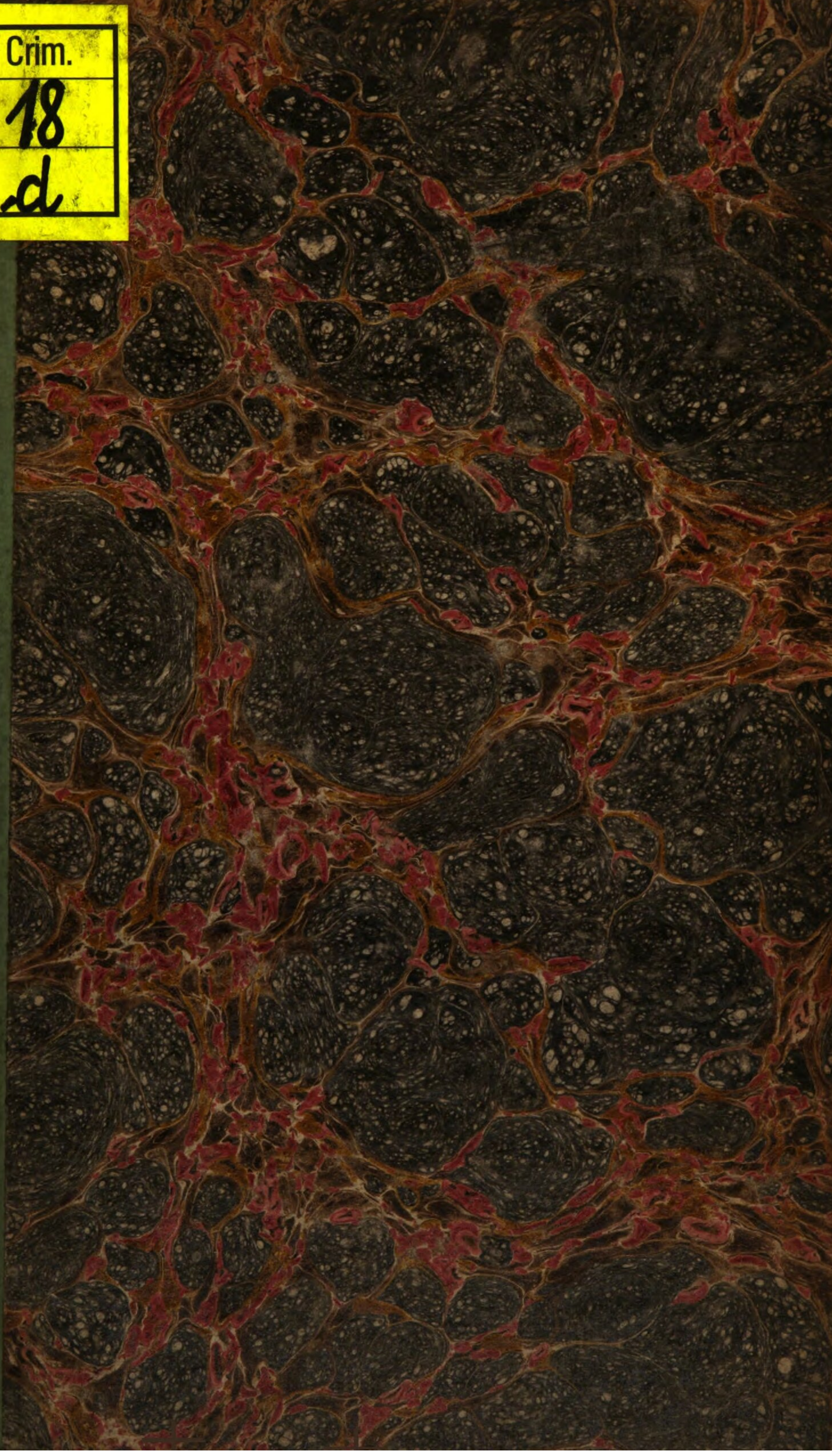


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LETTERS

TO

COUNT TORENO

ON

The proposed Penal Code,

DELIVERED IN BY

THE LEGISLATION COMMITTEE

OF

THE SPANISH CORTES,

APRIL 25th, 1821 :

WRITTEN AT THE COUNT'S REQUEST

By JEREMY BENTHAM, Esa.

LONDON:

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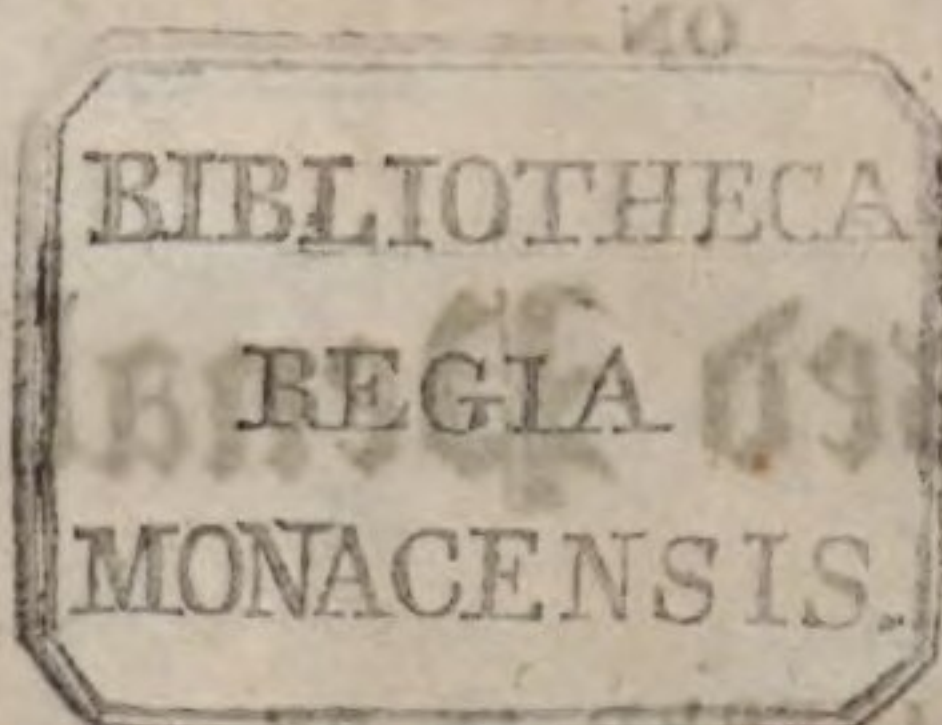
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1822.

LETTERS

TO

COUNT TORRENO



THE LEGISLATION COMMITTEE

OF

THE SPANISH CORTES

APRIL 25th 1821

WRITTEN AT THE COUNT'S REQUEST

By JEREMY BENTHAM Esq.

LONDON:

Bayerische
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1821

ADVERTISEMENT.

THE history of the present publication is as follows :

At the writing of the ensuing Letter, in so far as a judgement, which it has more than once happened to me to hear pronounced, is correct,—the writer of it—the *Conde de Torreno*—one of the Deputies to the Spanish Cortes from the province of Asturias, of the 149 European Deputies the only one whose name is a titled name, was one of the most influential men, not to say the most influential man, in all Spain.

On the 9th of August 1821, without any antecedent intercourse, or previous expectation on my part, I had the honour of receiving it from him. It is in the following terms:—

Monsieur J. Bentham.

Paris, le 6 Août 1821.

MONSIEUR,

Notre commun ami Mr. Bowring veut bien se charger de vous faire passer le volume ci-joint, qui comprend le projet du Code pénal présenté par le Comité à la deliberation de Cortes, qui doit avoir lieu l'hiver prochain. Vous y verrez des choses bonnes, d'autres fort mauvaises. N'allez pas pourtant vous effrayer, Monsieur, des articles qui parlent sur la religion : celà ne passera pas : le tems des persecutions en Espagne n'existe plus, et, malgré toutes les lois, il y a dans le fait une tolerance très grande. Je sou mets, Monsieur, à vos lumières et à la profondeur de votre esprit, et de vos connaissances, ce projet. Ayez la complaisance de me faire passer vos observations, d'ici aux derniers jours de Septembre, que je dois retourner en Espagne : je vous en serai extrêmement redevable :

j'en profiterai dans la discussion. A qui pourrais-je en effet mieux m'adresser, qu'au constant défenseur de l'humanité, et au profond écrivain de tant d'ouvrages célèbres sur la législation ?

Soyez sûr, Monsieur, du plaisir, et même du devoir, que je me ferai, d'écouter vos conseils dans cette matière, et de l'empressement que je mettrai toujours de vous offrir l'hommage de mon admiration, et de ma profonde considération.*

LE COMTE DE TORENO.

On the 22d of that same month (August 1821), and not before, I received the work which it announces.

On the 11th of September 1821, the Count being still at Paris, I sent off in manuscript, directed to him at that capital, by the post, the first of these seven Letters. The succeeding ones were directed either to him at Paris, to the care of the Spanish Mission there, or to him at Madrid. The day, on which the last of them was sent off, was the second of November, 1821.

The reader, as he proceeds, can scarce fail to be more or

* TRANSLATION.

Mr. J. Bentham.

SIR,

Paris, 6th August 1821.

Our common friend Mr. Bowring has the goodness to undertake to forward to you the accompanying volume, containing the project of the Penal Code, presented by the Committee for the deliberation of the Cortes, at its next winter's meeting. You will see in it some good things, others very bad. Do not however frighten yourself, Sir, about those articles which speak of religion : they will not pass : in Spain the time of persecutions is no longer in existence : and, spite of all laws, a very extensive toleration has place in fact. I submit this proposed Code, Sir, to the consideration of your enlightened mind. Do me the favour to convey to me your observations on it between this and the last days of September, at which time I shall be on my return to Spain. I shall be highly obliged by your so doing. I shall make my profit of them in the course of the discussion. An address of this sort—to whom could it be made with more propriety, than to the constant defender of the principles of humanity, to the profoundly thinking author of so many celebrated works on legislation ?

Be assured, Sir, of the pleasure, and even of the sense of duty, with which I shall attend to your suggestions on this subject, and of the eagerness with which I shall embrace every occasion of offering to you the homage of my admiration and of my high consideration.

LE COMTE DE TORENO.

less curious, to have some conception of the result produced by it, on the part of the two distinguished statesmen principally concerned:—*Comte Toreno*, at whose instance, the observations were made and communicated; and *Mr. Calatrava*, Chairman of the Legislation Committee of Cortes, composed of five members, by whose names the work which is the subject of them stands authenticated.

To this curiosity, such imperfect satisfaction, as is in my power, is here afforded. Its principal aliment will be—a second Letter, of the 26th September 1821, from the same illustrious hand. The reader will naturally enough expect to find it in this place. But as, at that time, the three first of these Letters of mine were on Count Toreno's table, any conception, which could be conveyed by that Letter of his to a person not acquainted with the contents of those same Letters to which his bears reference, would be altogether inadequate. For this reason,—this, together with all such further explanations as can be given, are referred to the conclusion of these Letters, and will be found under the head of *Supplemental Advertisement*. Suffice it in this place to mention, that, by that second Letter of the Count's, his consent to that intention of publication, which the reader will find declared by me, is signified.

Note.—In Letter I. p. 2. the reader will see certain *positions*, mentioned as designed to accompany the offer of an all-comprehensive and rationalized Code; and to serve as heads to so many sections in that address. In the list of these positions, though substantially they remain the same, considerable changes in respect of order and expression have presented themselves: and the tenor of the offer is intended to undergo a correspondent change. In the four first, no change is proposed to be made. But to the seven succeeding ones, the eight which here follow are now intended to be substituted.

5. The greatest happiness of the greatest number requires—that, for the function exercised by the drawing of the original draught of such a Code, the competitors admitted be as many as, without reward at the public expense, can be obtained: and so for that of proposing alterations in such draught as shall have been adopted. Plan for obtaining competitors.

6. The greatest happiness of the greatest number requires—that, for the drawing of any such draught, no reward at the public expense be given.

7. The greatest happiness of the greatest number requires—that every draught so given in be, from beginning to end, if possible, the work of a single hand.

8. The greatest happiness of the greatest number requires—that, such original draught being the work of a single hand, it be known to be so.

9. The greatest happiness of the greatest number requires—that, such original draught, being the work of a single hand, it be known whose the hand is.

10. The greatest happiness of the greatest number requires—that, for the drawing of the original draught, all foreigners be admitted into the competition: and that in so far as applicable, unless it be in all particulars taken together decidedly inferior, the draught of a foreigner be employed in preference.

11. On the part of an *individual*, proposing himself as draughtsman for the original draught of a Code of laws, willingness or unwillingness to interweave in his draught a *rationale* as above, is the most conclusive preliminary test, and that an indispensable one, of appropriate aptitude in relation to it.

12. On the part of a *ruler*, willingness or unwillingness to see established an all-comprehensive Code, with its *rationale* as above, is among the most conclusive tests of appropriate aptitude, in relation to such his situation.

In the form in which these Letters are headed, the Author and the Printer have to regret those incongruities which are but too visible. The mischief, such as it is, not being remediable, they are, neither of them, solicitous to inquire to whose account it is mostly chargeable. The case is—that, on several successive days, under the dread of losing a foreign post day, the sheets were got up under the superintendence of weak eyes. Scarcely in those of the reader will the matter be worth his notice. But it seemed better, that, in the way of confession, indication thus early should be given of it, than that the offenders should be supposed blind to so flagrant an offence against the joint laws of good authorship and good printership.

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CORRIGENDA.

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Page 44, line 17, dele *the security of*.

LETTERS

TO THE

CONDE DE TORENO.

LETTER I.

Occasion.—Inadequate this Examination.—A pre-established Standard wanting.—A Standard announced.—This Correspondence must be public—Why.

Queen's Square Place, Westminster, Sept. 11, 1821.

SIR,—ON the 9th last I received, in due course, through the House of our friend, the letter with which you have been pleased to honour me. On the 22d last, and not before, I received the work which it announced (“Proyecto deCodigo Penal,”) and to which it bears reference. So far as regards myself, that letter of yours will assuredly not be lost : nor yet to the world at large, so far as there is any truth in the supposition, that any beneficial effect in any shape will be produced by any thing that comes from my pen : for, among the testimonials which I may ere long have occasion to produce, it will shine with its due lustre.

When, in speaking of the effects producible by the treasures you have put in my hands, I have said thus much, I have, I fear, said little less than all which there is to be said ; for, by any particular remarks which I could find occasion to make on the work in question, I see, I must confess, but very little probability of my being able to render any service worth your notice. No such remarks could present any chance of being of use, otherwise than by means of a reference made by them, expressly or tacitly, to some standard of right and wrong considered as already established. Of no attempt towards the establishment of any such standard do I know, other than that which is contained in my own works : which standard I am about to endeavour at the completion of, and, should life last me a year or two longer, not altogether without hope of success. This standard I term the *Rationale* of the Code : and, in the Code which I am about to begin to draw up, the matter of

it will be interwoven throughout with that of the several proposed arrangements, which it is employed to explain, justify, and show the grounds of. Here then, apt or unapt, will be a standard, by which, if it be thought worth while, the work in question may in any part be judged of: but, without it, were I to take the proposed Code in hand, with a view to the making remarks on particular parts of it, I should never know where or how either to begin or end.

By the whole tenor of your letter, as well as the declared and only possible object of it, I am not only authorized but compelled to believe, that the more extensive any communication made by me on the subject may be, the more acceptable it will be to you; for, the subject to which you are pleased to invite my attention is no less than the whole of the projected Penal Code, not merely this or that one of the particular arrangements contained in it. Now then as to this matter the case stands thus—Exactly what you express your wishes to see me do, it is not in my power to do, with any the least prospect of good effect: in process of time, however, I am not only willing and desirous, but actually endeavouring to do *that* and a great deal *more*. In the following *positions*, which form the *heads* or *titles* of so many *sections*, the sort of work I am alluding to is expressed more correctly as well as concisely than I could in any other way express it.

Positions, designed to accompany the *offer* of an all-comprehensive and rationalized Code. They form the *titles* of so many *sections*, the *matter* of which gives the proofs.

Sect. 1. In every political state, the greatest happiness of the greatest number requires, that it be provided with an *all-comprehensive* body of law.

2. The greatest happiness of the greatest number requires, that such body of law be throughout accompanied by its *rationale*: i. e. with an indication of the *reasons* on which the several arrangements contained in it are grounded, and by which they are elucidated and justified.

3. The greatest happiness of the greatest number requires, that these reasons be such throughout as shall show the *conduciveness* of those several arrangements to the all-comprehensive and only defensible *end* thus expressed.

4. The greatest happiness of the greatest number requires, that in this *rationale*, the several *reasons* or sets of reasons be *contiguously* attached, to the several arrangements to which they respectively apply.

5. The greatest happiness of the greatest number requires, that, of this all-comprehensive body of law, with its rationale, the whole groundwork or first draught be, if possible, the work of a *single* hand.

6. The greatest happiness of the greatest number requires, that, being the work of a single hand, the work in question be *known* to be so.

7. The greatest happiness of the greatest number requires, that the work in question being the work of a single hand, and known to be so, it be known *whose* that hand is.

8. The greatest happiness of the greatest number requires, that,

aptitude in other respects not being inferior, the hand, of which the discourse in question is the work, be that of a *foreigner*, rather than that of a native.

9. The greatest happiness of the greatest number requires, that the work be, if possible, performed in the ordinary sense of the word *gratuitously*: in such sort, that no determinate *factitious* reward, in any shape, at the hand of any person, shall be either received or expected for it; but that, under that restriction, the number of rival works be the greatest obtainable.

10. On the part of any proposed *draughtsman*, *willingness*, or unwillingness to interweave in his draught a *rationale*, as above, is the most conclusive *test*, and that an indispensable one, of appropriate aptitude in relation to it.

11. On the part of a *ruler*, *willingness*, or unwillingness to see established an all-comprehensive Code with its *rationale*, as above, is among the most conclusive tests of appropriate aptitude, with reference to such *his* situation.

Of these positions the design is, to form the ground of an *offer* to compose the sort of work therein described; viz. The first draught of an *all-comprehensive and rationalized Code* for whatever nation or nations it may find able and willing to give acceptance to it. This paper is very nearly finished; and, when revised, endeavours will be used to get a copy or copies of it conveyed to Madrid. If in print, as I believe it must be, copies shall be endeavoured to be sent to you, in any number you may be pleased to command, and through any channel or channels you may be pleased to indicate. Copies will likewise be sent to *Portugal*: where, consistently with the disposition already manifested, acceptance can scarcely be refused. As to any other countries to which it may happen to them to be conveyed, the nature of the case renders any express mention of them unnecessary.

On this occasion, an idea I must beg of you to bear in mind is—that, in whatever I write with a view to Spanish law as above, the greatest happiness of the greatest number, as per articles 4 and 13 of the Constitution, is the object I have in view, and employ my labours, such as they are, in the endeavour to give increase to: and that accordingly, subordinate to that end must necessarily be, whatever I can do in compliance with the wishes of this or that individual, how exalted soever his situation and reputation may be.

Sometime ago, I received from Mr. Antonio Arguelles the honour of an invitation similar to this of yours. It had, however, a determinate and comparatively limited subject-matter,—the use proper to be made of the institution of a Jury. That gentleman had already received copies of all such of my works as I had been able to collect. He had even, without my knowledge, from the spontaneous and self-sacrificing generosity of a friend of mine, received duplicates of a considerable number of them. Not long after my receipt of his letter, a work of mine on a *part* of that subject, viz. *Special Juries*, a work, which after having been printed, had for ten years been suppressed by the

fears of a bookseller, was obtained of that bookseller by another, and published. The Spanish mission took charge of a copy for Mr. Arguelles: no letter accompanied it. I have not heard whether it has been received. Taken up out of its proper order, any thing that I could find to say on that or any other particular subject, without reference to the *tout ensemble*, could not be any thing like satisfactory to my own mind: it could not contain any thing that I should choose to abide by. I have, however, at different times dictated to an amanuensis a few premature and undigested thoughts, which I may perhaps endeavour to forward to him: but whether in manuscript or print I cannot yet determine: at any rate sooner or later they are intended to appear *in print*.

On the occasion of an intercourse such as this, public virtue and the greatest happiness of the greatest number, stand exposed to a danger of which, Sir, you are perhaps not aware. The *functionary consulting* has points of his own to compass. For support, he looks out for this or that individual, whose reputation with reference to the subject is more or less established. He applies to him for his opinions—on the whole subject-matter, or on particular parts or points in it. The opinions come. What is the consequence? In so far as they suit his views, he makes use of them: in so far as the name of the author appears needful to give support to the opinions, mention is made of it: in so far as this is not the case, the matter is sunk or appears under another name.

A short supposition will serve to exemplify my conception of the effect. I say—Let the Code pass: but the duration given to it will be, I hope, but temporary. You say, Let the Code pass: even Bentham, after all he has said against it, says so. Supposing this your wish, what should hinder you? who could even blame you? All this you see is but *supposition*: but it will serve to convey to you my conception of the mischief in question, just as well as if it were *fact*; as in part indeed you will find it to be.

So much for the *functionary consulting*. Now as to the individual consulted. Flattered with the notice taken of him, he gives opinions, and to whatever extent suits his purposes. But whether for the sake of the public or no, at any rate for the sake of his own reputation, and the pleasure of seeing exercise given to his power, his wish is, to see effect given to the thoughts he communicates. In respect of these his wishes, he feels himself at the same time in a state of entire dependence, on the individual by whom he has been consulted. To render his communications as acceptable as may be to this patron of his, is therefore an object he must not lose sight of. How is that to be done? By rendering his suggestions as favourable as may be to the patron's supposed wishes, that is, to his supposed particular interests and prepossessions. If no opinion contrary to his own is delivered in this view, at any rate he forbears to give any opinion which in his expectation would give offence. To what good end indeed should he? Nothing that the *functionary consulting* finds unpleasant to him, can the indi-

vidual thus consulted entertain any reasonable expectation of seeing employed by him.

Here then is an individual, native or foreigner no matter, whose thoughts on the subject in question, on the supposition of his competence, the statesman in office is desirous of seeing. Is it for his own sake? His desire will be to see no more of them than what may suit his particular purposes, and these he will keep to himself, or make use of in such proportion and manner as may be best adapted to that purpose. Is it for the sake of the public? His desire will be to see the whole without limitation, to see it displayed to the best advantage, and to see the whole public in possession of it.

Proceeding upon the supposition, that my notions on the subject of Legislation have been fortunate enough to obtain a place in your regard, all therefore that I can do consistently with the principles above submitted to you, all that I can do (I mean except the trifle which I shall mention presently, and which I cannot do but in the particular way which I shall also mention, and I have accordingly taken measures for it) is to beg your acceptance of a copy of three pamphlets, in which I have at different times used my endeavours, but as yet for the most part with very little success, to submit to the Spanish nation my ideas on several points of cardinal importance.

They are as follows :

1. The tract on the once proposed chamber of the privileged orders in the Cortes. (This stands *first* in one of those three pamphlets.) A translation, for which I was indebted to the pen of Mr. Mora, was read, if I may believe the newspapers, in the Cortes : it was even fortunate enough to be followed by unequivocal tokens of approbation on the part of that august assembly, if I may believe the information received through various channels, public and private, unconfirmed as it is by any communication from the assembly itself.

2. Observations on Judge Advocate *Hermosa's* panegyric on *Judicial delays*, &c. (It stands *second* in the above-mentioned pamphlet.) A copy was, with a view to publication, sent to Mr. Mora, and in process of time, on presumption of its failure, another copy was sent by our friend to a friend of his at Cadiz. I am not certain whether the receipt of the first copy has ever been acknowledged, and I am certain that no acknowledgement of the receipt of the second copy has been received here.

3. The letter to the Portuguese Nation, chiefly turning on some supposed imperfections in the Spanish Constitutional Code. (It stands 3rd and last in the above-mentioned pamphlet.) This found I know not what translator and publisher at Oporto : it would therefore be rather extraordinary, if some copies of the translation have not long before this found their way to Madrid.

4. The pamphlet on the *Liberty of the Press and Public Discussion*. Of this, 2 copies, the second on the presumption of the failure of the first, were sent to Madrid, addressed also to Mr. Mora, and in a letter written by that gentleman (I believe it was during the time of his

being in confinement,) he mentions his having gone about half way in a translation of it.

5. The remaining pamphlet of the three, intituled *Observations on the restrictive and prohibitive commercial system, especially with reference to the Decree of the Spanish Cortes of July 1820*, was not, like the above-mentioned ones, sent to Spain, or any where else, in manuscript. At a time considerably posterior to the transmission of the latest of the above-mentioned tracts, by the spontaneous care of my friend Mr. Bowring, whose name stands on the title page, it was committed in the first instance with additions from him, to the English press : and, if I am not much disappointed, a copy must ere now have reached your hands. (So likewise of the two others.) Of this you will, ere long, I have reason to think, see a Spanish translation in print, if the Spanish press be open to it.

In addition to the above-mentioned little assemblages of my ideas, covering as they do but a small, howsoever important, portion of the field of penal legislation,—you have all along, through that language of which you are so perfect a master, had, in common with that part of the Spanish public which is acquainted with that language, had access to those assemblages of my ideas, by which in a certain way the whole of that field is covered. In detail, it is true, not much : but in principle, in a manner more or less particular, indication of not much less than every thing that comes within the field of the officially proposed Penal Code, is there given. If the opinion, expressed in terms so flattering to me, continues to be entertained, what I have just indicated will afford an ample stock of matter, by means of which that opinion may manifest itself in practice.

All this while, my wish is—to pay what obedience is in my power, to commands so honourable to me, and at the same time without exposing either of us to any such imputations as those above described. For this purpose, should I on the present occasion find any use in submitting to you (principally, I must confess, with a view to my above-mentioned offer) a few scattered thoughts,—an effectual, and the only effectual course that the nature of the case admits of, and which I shall accordingly take, is—the giving to our correspondence whatever publicity it is susceptible of. In the liberty I thus venture to take, you will not, I am confident, see any cause of complaint on your part. On no anterior occasion, either in person or in writing, has any intercourse had place between us. In this letter of yours, no desire of secrecy is expressed : no reason for ascribing to you any such desire on my part do I see in it. On any future occasion, should it happen to me to receive the honour of any further communication from you, accompanied with an intimation, that in the whole or any part of it secrecy is desired, your commands to any such effect shall most punctually be observed.

On running over the remarks, which a few irregular dips into the document in question, made in the double view already mentioned, have already suggested, I find the aggregate quantity too bulky by a great deal to be forced into the compass of the present letter. With as

much dispatch as weak eyes, the labour of which, in the revision of the work of a copyist, is indispensable, will admit,—I propose however, to transmit the substance of them, in a series of future letters, of the respective contents of which some idea may, in how imperfect soever a manner, be conveyed by the following titles.

LETTER II.—On the course taken for preventing by means *other* than punishment *eo nomine*, all effectual indication of imperfection in the Proposed Penal Code—1. *Free Examination discouraged*.

LETTER III.—On the course taken for preventing, by means of punishment *eo nomine*, all effectual indication of imperfection in the existing political system, the Proposed Penal Code included.—2. *Free Examination punished*.

LETTER IV.—On the ulterior means employed for securing against amendment all imperfection in the political system, and for preventing the national will from manifesting itself.—3. *Improvement excluded, national voice silenced*.

LETTER V. Further grounds, for the apprehension, that by the proposed Code, the interest of the subject many is designedly or undesignedly sacrificed to that of the ruling few.—4. *The many sacrificed to the few*.

LETTER VI.—Anxiety of the Committee, to exclude rival works. Sanctionment of theirs on what supposition desirable. Freedom of this discussion apologized for.—5. *Rival works excluded.—Freedom of this apologized for*.

LETTER VII.—On Religion, and the plan pursued in the proposed Code for the support of it by death and other punishments.—6. *Support sought for Religion in slaughter and persecution*.

In the course of a very few days, two or three, a second, and *that*, the longest of the proposed letters, will I hope be in readiness to follow.

Meantime, with the respect not unequivocally I hope, indicated by these exertions, whatever may be the fruits of them, I remain, &c.

LETTER II.

On the Course taken by the Legislative Committee, to prevent, otherwise than by Punishment eo nomine, the free Examination of their proposed Penal Code.

SIR!—**I** CONTINUE. On the subject of the word *free*, as here applied, a word or two in explanation may have its use: misconception and ungrounded imputation of error may be obviated by it.

When, in speaking of action on the field of government, use is made of the word *freedom*,—of *freedom* considered as designative of a possession capable of being infringed or *violated*—it is pretty generally understood, though perhaps not quite so generally as it were to be wished, that it is not merely by physical force, or fear, or sufferance of *evil* in this or that shape, but likewise by hope or receipt of *good*; that the

infringement or violation of it is capable of being produced. It is in the case of *Election to Office*, that this extended acceptation seems to be most distinct and general : but, in regard to formation and manifestation of opinion, be the subject of consideration what it may, it will be found no less proper and needful. As evil is more easily producible, and capable of being carried to a higher pitch of intensity, than good, fear of evil, as applied to the purpose in question, is upon the whole the more efficient instrument of the two. But, though there are some cases in which the smoother instrument cannot be employed at all, and others in which both may be employed together, other cases again are not wanting, in which, while the rougher is altogether inapplicable, the smoother may be employed, and is continually employed, with perfect facility and sure effect. Examples may perhaps offer themselves, Sir, to your view before this letter closes.

I proceed. In my desire to give the utmost extent in my power, to whatever service my labours may be capable of rendering to my fellow creatures,—neither the nation, nor the government of which you bear so distinguished a part, could fail to be included. To the endeavours, already directed by me to this particular effect, you are not altogether a stranger ; nor yet, I believe, to the difficulties which hitherto these same endeavours have found in their way. Of these difficulties of course not the least effective has been, the aversion with which the foreign productions in question have but too unquestionably been regarded—regarded by that same Committee, on whose work you were pleased to call for my observations : and, to speak plainly, yet I hope not improperly, the consequence is—my first apprehension, and that a very serious one, that as far as depends upon the gentlemen in question, unless some change should take place in their sentiments, the Spanish mind will be rendered inaccessible to me.

The liberty of the press is a topic, on which (as above) I have already touched, in one of those recent tracts which I hope are, ere this, in your hands. But that little work was completed and printed before this authoritative work of the Spanish Legislation Committee was in mine. So paramount in my eyes is the importance of this liberty to good government—more so perhaps, supposing the separation possible, than even the form of government itself,—so intimate, at the same time, the connexion, between the liberty thus denominated, and whatever chance any work of mine may otherwise have, of becoming productive, in Spain, of any part of the effect aimed at by it,—that, on *this* occasion, in the course of my endeavours to obtain the access in question, I find myself unavoidably led to make some addition to what I have *there* said : and, what renders me the less scrupulous about troubling you on the subject, is—that thereby, to how small an extent so ever, my remarks, as far as they go, will be so many testimonies of my desire and endeavour to pay obedience to the commands, with which, Sir, you have been pleased to honour me.

The subject-matter in question being a proposed Code of Law, sure like every other human work to have its imperfections, the consequence

is,—that if any remarks on it come to be received as desired, only in so far as, to an extent more or less considerable, indication is given of its imperfections, can any such remarks be productive of any use. Of any such imperfections, simple indication is of some use, and, by an operation of this sort, some service is rendered. To propose a corresponding alteration, if, and in proportion as, the alteration is well adapted to the purpose, is to render an ulterior and still greater service. On the presumption of its contributing to the melioration of the subject-matter, alteration is in the language of English legislation, adopted into the French, termed *amendment*. Amendment is either omission, insertion, or, which is a compound of the two, substitution. If this be true, of this cast therefore, and this only,—of this disapprobative cast, and not of the approbative cast,—are the remarks which a workman, really solicitous for the ultimate goodness of his work, will be desirous of receiving, and use his endeavours to receive.

To the truth of the above position, one exception indeed there is : and, to preserve the statement from the imputation of error or oversight, though the exception has no place in the present case, I will mention it. If so it be, that the work in question has been made the subject of delusive remarks, or insufficiently-grounded conclusions of the disapprobative cast, then so it is, that by counter remarks of an approbative tendency,—in a word, by remarks of a *justificative* cast with reference to the work, service may also be rendered.

Such then, and such alone, are the sort of remarks by the communication or receipt of which the greatest happiness of the greatest number can on the present occasion be promoted : receipt, namely by the two descriptions of persons, to whom in their respective situations it belongs to judge : by the legislators, that, for the benefit of their constituents, they may themselves put the remarks to use : by their constituents, that they may judge how far their representatives have put to use the information furnished to them, and thence how far they have given themselves a title to a renewal of confidence.

Unfortunately, in the eyes of legislators themselves, in the eyes of public trustees in whatever situation, no remarks of any such disapprobative cast is it their interest to see received by their principals : no such remarks would it be altogether agreeable to them to receive themselves, even if (what can scarcely be) they were assured that the remarks so received would not ever find their way to any one of those same principals. As to what regards liberty of discussion, the truth is, (how should it be otherwise ?) in every country (so is human nature constituted), what every man desires is, to see all other men in possession of the most perfect liberty of making public all such ideas, by the publication of which the accomplishment of his views and purposes would, in his view of the matter, be promoted ; to see no man in possession of any such liberty as that of making public any such ideas, by the publication of which the accomplishment of his views and purposes would, in his view of the matter, be impeded. If it be of human beings that the population of Spain is composed, this account

of the matter will be no less applicable to that country than to any other.

In every political state, without exception, it *has been* the practice of rulers to employ the power attached to their situation, in the endeavour to give effect to this desire in both its branches; in every political state but one, this is *still* their practice. You will not, I hope, Sir, insist on my speaking of Spain as being that *one*. In my pamphlet on the liberty of the press and public discussion, I have already pointed it out: the Anglo-American United States.

Correspondent to this desire is, in that same commanding situation, the regard entertained for all such useful truths in general as belong to the field of government. Ever anxious is this regard: but the expedient employed for securing access and acceptance to all such truths, at the hands of other men, is, in case of diversity of opinion, actual or possible, to prevent men from hearing any thing about the matter from any other than one side. What that side is may without much difficulty be imagined.

As this one side is of course the side fixt upon by these same tenderly-solicitous and all-commanding functionaries, the partiality thus manifested might be productive of some danger, were it not for that conjunction of infallibility with impeccability, the belief of which it is their equally solicitous and all-comprehensive endeavour to inculcate into the minds of men in general; but of course more particularly into the minds of all those, whose happiness it is to live in subjection to their power.

Twenty years, if I misrecollect not, was the term during which it was at one time the determination of a National Assembly of France, that the Constitutional Code framed by them should continue exempt from all alteration at the hands of any set of men; and in particular of any set of men elected by their Constituents, in the same way as they themselves had been. Not quite so intense perhaps was the persuasion of their being in possession of the same useful pair of attributes, in the breasts of the authors of your already established Constitutional Code. Not greater than eight years was the term appointed for this purpose: this for a finite term; but, at the end of this finite quantity, came another, on the face of which a colour, not altogether unlike that of infinity, is visible. But of this I have spoken in one of those tracts of mine already mentioned.

It cannot, I think, appear questionable to you, Sir, that it is by these same universally prevalent dispositions, that, on the occasion in question, the conduct of the gentlemen of the Committee in question has, with no small degree of exactness, been regulated: regulated, in relation to two kindred objects, to the connexion between which your attention has been above invited, namely, the liberty of the press in general, and the faculty desired by me of submitting to the consideration of the whole body of the representatives of the Spanish nation a series of works, the first of them having the same subject-matter as that of the work laid before them by that same Committee. When brought home to

individuals, the idea, which on the present occasion stands associated with it, is not a pleasant one: yet, for clearness, and that the state of the case may be immediately and distinctly seen, I must e'en ascribe to it its proper relative character, and call it a work coming in *competition* with theirs: a work which, with reference to theirs, is a *rival* work.

I shall first speak of the policy in question, as it may be seen applying itself to the more extensive and major object, the liberty of the press at large. I shall then take leave to request your more particular attention, for the bearing which it has upon the particular work in question—the proposed rival work: but even from the first, this minor object will unavoidably be ever and anon peeping out, and offering itself to view.

Good, operating in the way of reward, evil, operating in the way of punishment:—these I think have been already mentioned, as the instruments, and the two only instruments, by which, on an occasion such as that in question, for a purpose such as that in question, the minds in question could in any direct way be operated upon.

Applied to the purpose here in question, the matter of reward not only admits but requires some refinement in the mode of applying it. On the present occasion, the object which gave room for such an application was, the obtaining at the hands of the Cortes at large in the first instance, and ultimately and finally at the hands of their constituents, the people at large, acceptance for the proposed work.

Though not in name, nor in the shape of a determinate sum of money already deposited in a bag, the faculty of making application of the matter of reward, in its principal shapes, money, power, and reputation, could not, in the nature of things, fail to be virtually at the disposal, of men in the situation in which the gentlemen in question were acting. Between the whole legislative body, of which they were and are such distinguished members; between this body on the one part, and the immediate and avowed givers of all the above-mentioned political good gifts, namely, the Monarch, &c. on the other, I need scarce remind you how intimate the connexion is, which cannot but have place.

Turning to Article 171, to the King, by his sole authority, I see it belongs (No. 16) to nominate and remove (if *separar* means *to remove*) the Ministers of State and Dispatch, namely, the seven ministers, of whom (Art. 222) the Gobierno is composed; (No. 5) to fill up (if *proveer* means *to fill up*) all civil and military employments; (No. 8) to command the army and navy, and to appoint the commanders; (No. 19) to nominate ambassadors, ministers, and consuls; (No 12) to order the application of the funds, appropriated to each branch of the public administration; (No. 7) to grant honours and distinctions of every class according to law; (No. 13) to pardon delinquents according to law. Now then, Sir, it being so completely in the power of the members of the Cortes to obtain for themselves, and their connexions, an undefined indeed but thence a boundless share in the aggregate mass of all these good things; and this, in the instance of each of them,

without so much as a pretence of meritorious service in any individual shape, or of any probable expectation of any such service, must it not, if there be any difference, be matter of increased facility to them, to obtain for other persons, shares, in that same vast mass, by reference made to incontestably existing service? service rendered in such well defined as well as universally conspicuous shapes, as those which stand recorded in so many portions of written discourse, having for their subjects, matters so superior in extent and importance to those which form the ordinary subjects of official service?

The gentlemen in question may perhaps assure you, Sir, (and I should not wonder if they did) that this notion of their having any such good things at command is my mistake: for that in articles 129, 130, the Constitution has, by express prohibition, taken care to preserve their virtue against temptation in every such shape; and that in article 202 of their own proposed Penal Code, by forfeiture, infamy and expulsion, it has been their care that *that* same article in the Constitutional Code shall not be a dead letter. A prohibition? Excuse me, Sir, speaking with respect, the mistake is not mine, but theirs. Not *prohibition*, but permission is the *effect* (and can I avoid adding *the object*?) of these same self-denying ordinances:—of the severe virtue, thus displayed by the constitution-makers of the first Cortes, and of the rigour with which the gentlemen in question have proposed to enforce it. True it is, that by article 129 no deputy, *while such*, can either receive for himself any employment of the number of those which are conferred by the king! Alas! no: if he is unfortunate enough not to see any person whom he can trust to receive it for him, he must e'en wait for it till the unexpired part of the term of his deputyship, namely from two days to not much less than two years, has elapsed. By the next article (130) if a *pension* or a lot of *factitious dignity* be the object of his wishes, he must even wait one year longer for the fulfilment of them. Moreover, what he is there declared incapable of receiving for himself, (*admitir, obtenir*) he is by both articles taken together prohibited, and during the same length of time, from *soliciting* for another. *Solicit*? No, to be sure, no such thing ought he ever to do: it would be beneath his dignity. It is for the creatures of the Crown to *solicit*, and at *his* hands, the honour which a member of the legislative body would do to them by his acceptance. So much for the process of solicitation: a process, it must be acknowledged, ill suited to a person so exalted: accordingly the trouble and humiliation of it is saved to him, the benefit remains untouched and pure.

The severity thus displayed is indeed most exemplary: but the act in the proscription of which it expends itself, is an event that can never happen. What? can solicitation be necessary to a man, to produce the supposition that money, power, or factitious dignity, for himself or his connexion, are among the things he would like to have? Such, Sir, is the footing on which the prohibition (meaning always the *permission*) stands in the Constitutional Code. This is the footing on which, in the projected Penal Code, gentlemen found it placed; and on this same footing have they left it.

The faculty, which, under your constitution, the representatives of the people have, of making their bargains with the advisers of the Crown, and thereby, so it be in a number sufficient to compose a majority, employing the whole force of government, in the exercise of depredation, and of oppression in all its other shapes, at the expense of their constituents,—this disastrous faculty comes in here, it must be confessed, but as in a parenthesis. It is, however, that sort of parenthesis, which can scarcely, on any occasion, avoid obtruding itself: for, what is the occasion in which the state of things thus alluded to will not be exercising its irresistible influence? Yes, Sir, it is the necessary result of the existence of any race of irremovable functionaries whatsoever, with a certain quantity of the objects of general desire at their disposal. The legislator who gives to any such race this power, gives the invitation. The people's representative, who is content to act as such, without using any endeavours to remove the power, out of the hands so situated and so filled, gives his acceptance; a tacit indeed, but not the less effectual acceptance. Whether, in your circumstances, any thing better could have been done, is another question: meantime, be it ever so bad, that which is done, is not the less done.

On the part of the representatives of the people, during the first days of such a constitution, before things are come to a settlement, and persons are come to an understanding, fear or ambition may produce refractoriness. Little by little, however, if the constitution keeps upon its legs, by mutual interest a sort of agreement will be produced, and a sort of partnership concern, always at the expense of the people, established, and carried on: partnership, carried on, and, in some proportion or other, variable according as individual character varies,—division of the common stock of the objects of general desire continually made. Day by day, stock, and power of enlarging it, will receive increase: day by day, the purse of government will be replenished: day by day the hands of government will be strengthened: strengthened by that course, which, death in hand, death for every thing, gentlemen (I see) have already been exerting themselves with so much energy in marking out: an energy, some samples of which it will lie in my way, Sir, to submit to your consideration. Yes, Sir, a state of contest, and ill humour, such as seems to have place at present, or a state of agreement such as that I have just been giving intimation of, and gentlemen with their code have thus been making preparation for—such, in every nation on whose shoulders an irremovable chief, clothed with any such body of power as above, or any thing approaching to it, is fastened,—such, Sir, is the only alternative.

Well, Sir, my parenthesis is at an end.

But (says somebody) this reward that you speak of, as being held out to annotators—in what shape is it that you see it held out? Sir, in no shape: in no shape, and thereby in all shapes: in all shapes, in which it may be regarded as being, either immediately or by the intervention of

other hands, capable of being administered to such as shall use their endeavours to be thought to merit it. From no such quarter as that in question can be *invitation* given, but *reward*, of itself, places itself at the back of it. Seeing the invitation, you see the reward: seeing the reward, you see it in all the shapes, that imagination, warmed by hope, can give to it.

Now then as to the invitation itself. In the preface to this proposed Code, (see the preface, p. xii.) you may see the invitation in question given. Invitation! and to what service? To the service that would be rendered by the composition of an entire work on the subject in question? of any work fashioned throughout by a single hand? Of the advantage attendant on this plan of operation you see, Sir, the exposition I have announced. Rival works indeed? On this, or any other occasion, have gentlemen given encouragement in any shape to rival works? Not they indeed. And why not? The answer is almost too obvious to bear mentioning. Suppose a rival work produced—a work to any amount, howsoever great, more eminently conducive than theirs to the end professed to be aimed at,—suppose this done, the work would not have been theirs, the praise would not have been theirs, the rewards, in whatsoever shape looked for, would not have been theirs,—at any rate would not have all of them been theirs. How then could any such idea as that of a rival work have been an endurable one?

Be this as it may, *this* was *not* the service called for. See then what *was* that service. It was the taking in hand the existing work, the only work which, so far as depended upon them, gentlemen would suffer to come into existence; the taking in hand this work, and the sending in remarks upon it. Remarks,—but of what description? Of that description, which alone could, with reference to the greatest happiness of the greatest number of your fellow countrymen, Sir, be of any use? remarks, in a word, of the disapprobative cast already mentioned? remarks indicative of imperfection, with or without proposed amendments? Oh, no: such was not the sort of remarks wished for. To remarks of this cast no prohibitive bar, it is true, stands opposed. But to what purpose should any such bar have been opposed? what need of it could the nature of the case admit of? In what shape, by any man of common sense, could reward in any shape be expected from any such remarks? Yes, peradventure, from indication given of this or that little spot, or supposed spot, in the sun, just for the sake of showing what it might be in the power of the observer to discover in other luminaries, if it were made worth his while. Yes: a drop or two of gentle censure, but tempered with becoming diffidence and apology, sweetened by an ample infusion of panegyric, and atoned for by intimations of more unreserved obsequiousness on a more favourable opportunity.

Thus it is that, even supposing it were in the terms of it held out to all, a reward offered for such a service would, in the interpretation put upon it, be unavoidably narrowed: narrowed by the consideration of the situation from whence it came. The situation, as above described, considered,—descriptions of persons, more than one, may be named, from

whom, how well soever qualified, the probability could not, in the eyes of the gentlemen in question, be great, that without special invitation any such remarks should come. Take, for an example of one of these classes, natives known to be not well affected to the recently introduced order of things: take for another example, foreigners: to them, unless the design had been to prevent remarks from being sent in by them,—to them should special invitations have been addressed. And why not? why not, even to the most hostile? From a hostile hand, out of a hundred remarks, suppose ninety-nine not only in their form hostile, but in their tendency mischievous: so long as there is one that is beneficial, to reject it for no better reason than that of its coming from a hostile quarter, is it consistent with common sense? because this or that man has laboured to hurt you, is that a reason why you should refuse to convey a benefit to those for whom you are in trust?

So much as to undoubted enemies. But from the foreigner, as such, nothing of hostility could have been apprehended. Knowing the prepossessions he would have to encounter, by what inducement, but the hope of rendering, or that of being thought to have rendered, useful service, could he have been led to impose upon himself the labour, necessary to the making trial, whether it would be permitted to him to render it?

Such, if I do not mistake the matter, being the course which a preferable regard for the greatest happiness of the greatest number of Spanish citizens, would, on the occasion in question, have caused to be taken in relation to foreigners, be pleased now, Sir, to observe the course actually taken.

Advertisements were proposed to be inserted, and doubtless were inserted, in the national Gazette:—advertisements inviting remarks from all hands, inviting them with the most eloquent energy imaginable.

Tercero says (page xx.) *Que asimismo, por anuncio en la gaceta, se invite á todos los literatos y personas instruidas que de este modo quieran concurrir á riempresa tan recomendable y de tanto interes para toda la nacion, espandose que las Cortes apreciarán sobre una manera el que lo ejecuten, y den este testimonio de PATRIOTISMO y amor á la causa pública.*

At that very time, one hand was not unknown—one hand, from which, with well-grounded assurance, gentlemen might have expected—if not exactly the sort, much more than the sort, of service thus called for. The interval, and more than the interval, allowed for these communications, namely, between some day *previous* to the 21st of April 1821, and the 1st of July 1821, had passed away; and by that hand no intimation to any such effect had been received. Whatever information, now in the middle of September, the individual in question is possessed of, it is to yourself, Sir, that, viz. on the 22d of August and not before, he became indebted for it. Was it that his name, or his works, were unknown to them? No, assuredly. For in the hearing of the gentlemen in question, one of those works had been read: with

others, he is not without reason for believing, that of old some of them had been familiar. Others again, and in no small number, had, to their knowledge, been presented to the illustrious body, of which they are such distinguished members ; and, if he has not been egregiously misinformed, presented, and, with no very common tokens of approbation, accepted. Is it that the way to the scene of his labours,—is it that the way to his hermitage—was unknowable or unknown to them ? Sir, (not to speak of private correspondence through the Spanish mission at the Court of London,) the Finance Minister of the day in his public capacity, the Minister of the Interior of the day in his private capacity, the whole Gobierno of the day, the whole septemvirate of Ministers, had found the way to it.

But no : not merely on that *one* foreigner,—no, but on all foreigners without exception, was the exclusion meant to be put : witness the word *patriotismo* ; for, the Spanish being the nation in question, whatsoever were the service rendered by any foreign hand, whatsoever were the generous affection manifested by any such service, it is not any such word as patriotism that could be the name for it.

On this word *patriotismo* a not uninformative comment is supplied, by the affront put, through the medium of the French papers, on one of the members of the French legislative assembly, and on the present which, doubtless in the presumption of a due regard on the part of the constituted authorities of Spain for the interest of their principals—he had ventured to make to the Cortes : little, of course, could that distinguished representative of the French people think, that for the good he was seeking to do to the Spanish nation, evil in that or any other shape would be the requital. This, of course, has for its ground the supposition of a participation, on the part of the gentlemen in question, in the affront so given : what truth there may be in it can scarcely be unknown to a person in your position, Sir, but is altogether unknown to me : only from what is known to me, namely that which is known to every body, can any judgement of mine be formed. In that case, what there was of purposed affront out of the question, if any real injury was done, to what party or parties was it done ? to the individual, by whom the information, whatever it was, was thus presented ? Not, but to the people, who see in the gentlemen in question their appointed agents and trustees. Is it not to them, Sir, that the injury, if any, was done ?—an injury, the magnitude of which will be in the direct ratio of the relative usefulness of the information thus rejected.

Oh ! but, Spanish wisdom ! such is the transcendancy of Spanish wisdom ! by it all the assistance that could be had from the whole world besides, is rendered superfluous and useless ! Thus it is that self-regard and self-sufficiency think to hide themselves under a cloak of patriotism. To every man's vanity a bribe is thus offered in the shape of a compliment ; and such a compliment ! And for this bribe it is, that he is called upon to give the reins to particular and sinister interest in the breast of these his agents, and to make sacrifice of whatever benefit, to an amount altogether boundless, might have been the result of the assistance it

accepted : assistance given to inexperience by experience on a field of action, at once the most important and the most difficult that can be named.

True it is that, in a certain way, in speaking of what they have already done, mention is made by them, but in the most general terms imaginable, of their having taken cognizance of foreign Codes,—an alleged token of zeal, industry, magnanimity, and prudence, for which, by the very mention made of it, praise is claimed. As this was no more than what every eye would look to them for as a duty, no praise was to be had for the avoidance of it : on the contrary, it was only from the alleged performance of the task that any thing in the way of praise could be expected.

But information in the field of legislation being the thing to be looked for, for what reason look for it in the works of men clothed in power—in works, too, in and by which that very power has been exercised—for what reason look for it to such works, not only in preference to, but even to the exclusion of, the works of men not so distinguished ? Supposing the greatest happiness of the greatest number of their constituents their end in view, there were two reasons, why to unofficial even the preference should have been given over all such official productions. In the very nature of the situation from which they have come, what is made manifest by all such official productions, is—that they were produced under the irresistible influence of a *sinister* interest : an interest separate from, and throughout the whole field of legislation, in numerous and important points, diametrically opposite to, that of the greatest number : in a word, a particular interest, to which, throughout the whole extent of such opposition, the universal interest would of course be sacrificed. In regard to the official productions, this was matter of certainty : it could not be otherwise : in regard to the unofficial productions, though, by the unavoidable exposure to the temptations held out by the ambition of having a place among the ruling few, the like result is in each man's case rendered but too probable, yet there was no such certainty as in the other case.

So much as to what depends upon *moral*, now as to what depends upon *intellectual*, aptitude.

From the situation of the unofficial publicist, something in the way of a *rationale* might be expected : expected, and even with full assurance. Why ? Because on this would be his sole dependence for whatever influence he could hope to exercise. To the work of the official publicist in question,—if the writer whose writing, whatsoever might be the purport of it, was to have the force of law,—no such needless incumbrance had ever been seen attached. From that situation, prisons and gibbets, such as the gentlemen in question have prepared such abundant work for, they saw every where set up in the place of *reasons* ; and by those irresistible instruments, the proverbially feeble one, as they saw but too plainly, has in all such works been, in the judgement of the workmen at least, rendered needless and superfluous.

Thus it is, that, in a kindred and congenial sinister interest, the sinister interest to the operation of which the gentlemen in question, in their situation, stood so inevitably exposed, found a natural ally : while the indiscriminating prejudice, which power, by whomsoever possessed, and how ill so ever exercised, has every where found means to establish in favour of itself and its own operations, gave its sanction to the expectation that, in works of that description, fit models and objects of imitation for their own work would be viewed : works of which, accordingly, in that character, I cannot but hope to find, Sir, that in your opinion but too much use has been made.

The truth is—who can deny it ?—one exception alone excepted—as between the rulers of every nation and the rulers of every other, there exists a community of sinister interest, and correspondent sympathy. In particular, in the union of impeccability with infallibility, may be seen a pair of attributes, the belief in which is to all of them alike convenient : and in the assumption of which they accordingly fail not, any of them, to join, with equally plenary and unqualified self-satisfaction and assurance. True it is, that to be inferior in the conjunct scales of moral and intellectual virtue to those whose place is inferior to their own in the conjunct scales of power and opulence, is a condition entailed upon them by the unalterable nature of things : for in the direct and not in the inverse ratio of the need he has of voluntary good offices at the hands of his fellow creatures, will be the strength of a man's solicitude and endeavours to stand high in their esteem, and to deserve well at their hands. But, the certificate to the contrary, which, with an unanimity that only within these few years has begun to experience any disturbance—this most convenient and comfortable certificate, which, under the same sinister influence, has been signed by almost all writers, from whose works men have derived that instruction by which mind is formed, has as yet kept minds for the most part shut against a truth, which, when once received, will be found pregnant with all comprehensive practice.

Upon the sort of service in question, at the hands of foreigners, friendly or unfriendly, with what pretension to consistency, could an exclusion, in any shape, direct or thus indirect, be thus put ? I mean always on any such supposition as that the greatest happiness of the greatest number of their constituents was the end in view. For, that they derived whatever service was in their eyes capable of being derived from foreign *Codes*, is what gentlemen themselves declare, (p. xii.) and even give themselves credit for. By any such accidental circumstance as that of its having received the sanction of a government in a foreign country, is it in the nature of the case, that the utility of any arrangement with reference to Spain shall have received increase ? And in that case, let the draughtsman have been who he may, was he any thing more than one out of an indefinite number of his countrymen, from each of whom equally well grounded expectation of the like service might with equal reason, not to speak of the superior reason above mentioned, have been entertained ? With perfect consistency, however, it must

be acknowledged, might that be done which was done, on the supposition that it was their own particular interest, in preference to, and to the exclusion of, that all-comprehensive interest that gentleman had in view. For in the case of the Codes, the service, said in general terms to be profited by, being already rendered, was a service, the rendering of which it was not in their power to prevent coming into existence: and the individual by whom it had been rendered not being known, could not rob them of any part of the looked-for rewards in any shape: whereas in the case of any foreigner by whom an invitation given by them had been accepted, the individual by whom the service had been rendered would have possessed, and naturally speaking have exercised, the faculty of making himself known, and thereby have come in for his due share, whatever it might have been, of the reward: at any rate of the praise.

As to foreignership *at large*—foreignership in unofficial situations—this condition, which, by the gentlemen in question, has been taken for a cause of effective exclusion, is the very one which, in the paper above referred to, you may have observed me employing in the character of a ground for preference. The reason is—the comparative inaccessibility of that situation to all corruptive influence. After what has been said, I would rather hear you answer, than say myself, whether it was not by the consideration of this very inaccessibility among other circumstances, that the exclusion was determined.

But not only is the door thus shut by them against all information from foreigners and from opponent fellow-citizens, but with still more effective and inexorable rigour is it shut against the greater number of those individuals, how well so ever affected, whose happiness it cannot but have been gentlemen's wish should be understood to have been their end in view. You see already, Sir, that it is of ultramarines that I speak: of such of those whose distance from the seat of legislation precluded them from the possibility of causing any information on the subject to be delivered in from them within the appointed time: that is to say, of all of them in the lump: those only excepted, to whom, in a number scarcely equal to that of Frenchmen, it may have happened during the interval to have had their residence within the Spanish part of the Peninsula. No political bar, it is true, here: nothing more than a physical bar. But the physical bar is as insuperable as those political bars which your legislature (pardon me, Sir,) has been in so much haste to set up—I mean those which belong to the prohibitive and restrictive anticommercial system—are feeble and inefficacious. Your thus excluded fellow-citizens, such of them as still remain to you,—what think you will they say to this? to a proceeding, in which, so far as regards them, even the common exterior forms have not been observed? If Spaniards are lovers of forms—and they have not unsparingly been spoken of as being rather too much so for their own interest—if Spaniards are lovers of forms, how will the matter be taken by these your distant kinsmen? Are they Spaniards? are they non-Spaniards? If Spaniards, what treatment is this that has been

given to them? If non-Spaniards, where is your right to legislate over them? where is so much as your pretence?

When speaking of information from foreign hands, it is of themselves (p. xii.) that, of course, they speak, as the persons of all others to adopt whatsoever shall be "most analogous to the political state of the nation." Ah, Sir! should you ever see the remarks I have ventured to make, and the arrangements I have ventured to propose, with an equal view to the greatest happiness of Peninsular and Ultramarine Spaniards, you will see perhaps "how much more analogous to the political state" of the greatest number, is the system proposed by one foreigner at least, than the one proposed by these so highly distinguished and selected Spanish citizens. Yes, Sir; with no eye other than an equal eye, could a person not exposed either to sinister influence, or to interest-begotten prejudice, have considered the interests and claims of the two so unhappily conflicting parties: and in the unendurableness of all useful and impartial information on that subject, may not the aversion to receive any such service from any such hand, have had one at least of its causes?

Ah, Sir! it is not only from what it may be in men's power to do, but likewise from what it may be in their inclination to do, that, to have any chance of proving correct, our inferences must be deduced. And whatever be the meaning of the phrase "*análogo al estado político de la nación*—" whatsoever be the meaning of this so conveniently nebulous insinuation—think, Sir, if in all its parts your system of legislation were equally "*analogous to the political state*" of those Spaniards, who in greater number are inhabitants of Ultramarine Spain, as of those who in lesser numbers are inhabitants of Peninsular Spain, where would be the advantage that could possibly be derived by the lesser number from the dominion claimed by them over the greater? But this is among the parts of the field of thought and action, on which, that their view of them may be the clearer, men in your country, as in every other, are so unhappily confirmed in the habit of shutting their eyes: at any rate of striving, might and main, to keep shut the eyes of their fellow-citizens. O yes! if Ultramarine could as easily be shut as Peninsular eyes! then would all be peace and amity.

Such being the descriptions of persons against whom, with their remarks, the door is shut, a word as to those to whom it is left open. These are natives of the Peninsular Spain at large, and one particular class—the class of *lawyers*. (See p. xix.) To the invitation given to natives at large, apply those observations which need not be repeated.

As to lawyers, being already comprehended in that general description, to them no special invitation, no *second* invitation, could naturally have been given, but for some special purpose. What can have been that purpose?

If there be a class of men whose particular interest is in a state of diametrical and immoveable opposition to the best interests and greatest happiness of the greatest number, it is the class of lawyers: it is their interest that, in regard to every possession, for the security of which

men look to law, uncertainty should be at the highest degree of the scale at which it can be, consistently with the sufficiency of the fund, from which the professional profit must be drawn: it is their interest that the expense, with its sources and accompaniments, the delays and vexations attached to the purchase of a man's claim for justice, be as abundant as possible, for the sake of the profit extractible out of the expense.

In this profession, the state of the mind—is it not, to a first view, that of a perfect indifference as between *right* and wrong, for the defence of either of which, as it may happen, a man is hired? to a nearer view, a predilection in favour of *wrong*, as being the most dependent and most profitable customer? The assassin so called, is the malefactor, who, for the hire he receives, risks his life; the lawyer is the malefactor, who, for the hire he receives, risks nothing: risks nothing; but, on the contrary, like the conqueror, obtains at the hands of the foolish and corrupted multitude applause and admiration, in the direct ratio of the quantity of human misery he has produced.

If there be a profession, by which a man is prepared for the perpetration of mischief, in profitable, so it be an unpunishable shape, is it not the profession of the law? If there be a profession by which, by the power of continual practice and continually received remuneration, all regard for truth is completely eradicated—a profession, by which insincerity is by the same means, with correspondent effect, injected and fixed, is it not the profession of the law? If there be a profession, by which, by the same perpetually recurring operation, a man is more effectually prepared than by any other for the letting his faculties out to any person, for any purpose for which reward in opposite shape and adequate quantity is to be got—if there be a profession, by which, for even the most inconsiderable reward, a man is prepared, so it be without personal hazard to himself, at the instance of any one who is able and willing to give him that reward, to render to the greatest amount a sacrifice of the greatest happiness of the greatest number,—is it not the profession of the law?

These considerations—all which stand on the surface of the case—these considerations, which so stare every man in the face, can they have been a secret to the gentlemen of whom I speak? Was it possible for them to doubt of the object and tendency of any remark, that, consistently with the nature of man, could come from such a source? Was it possible for them to be uninformed of the alliance between the particular and sinister interest of this class of men, and whatever particular and sinister interest their own situation exposed them to the action of?

I shall presently, Sir, have to request your notice, for a sort of auction which, in this preface of theirs, gentlemen have set up:—an auction, at which the lots on sale are composed of recommendations, to be given by them to the favour of the givers of good gifts, and the biddings are to be in expressions of praise bestowed upon this their own work; the first bidding, above which all others are to rise in a sort of indefinite height, having, as you will see, been made by themselves.

Supposing the auction to find bidders, can there have been any doubt in gentlemen's minds, of the spirit with which biddings would come from the class of purchasers thus exclusively distinguished?

Not that the door ought to have been shut against lawyers, any more than against any less determined enemies of good government and good laws; only that it should not have been thrown open to them so much wider than to friends; in a word, than to all the world besides.

On an occasion such as this, in the force of public opinion, any man, even though a lawyer, would, if it were in his own single person that he came forward with his remarks, find some restraint: some restraint on the effusion of particular and sinister interest in one situation, seeking to be admitted into partnership with particular and sinister interest in a situation more elevated and effective. Even of this restraint, on looking at the terms of the special invitation thus addressed to lawyers, it seems as if the removal were among their objects. Copies of the proposed Code are ordered by them to be *sent*—Sent whither? To the three sorts of bodies corporate thus denominated; namely, “Universities, Tribunals, and Colleges of Advocates.” By whom, in such a case, might it most naturally have been expected, that the returns, if any, made to all this magnanimity, would be made? By whom? unless it be by the several bodies, to whom before all other persons, if not to the exclusion of all other persons, it was to be, and I cannot but conclude has been, made known. But by any body in the situation of this Committee, from any of the bodies so addressed by it,—what, consistently with the universal principles of human nature, as evidenced by universal practice, could be expected? what, unless in the accidental case of discord produced by particular interests, could be expected, but one uninterrupted chorus of extatic praise?

Will it be said, that by the words employed in the designation of these bodies, nothing more was meant than to make known the channels employed for conveying the great work to the cognizance of individuals, and that it was from the members in their individual capacity, and not from the bodies, (that is to say, not from some of the leading members, released by their union from all responsibility as towards public opinion,) that the remarks were looked for? But had this been the meaning, where could have been the difficulty of finding expression for it? Whether this could have been their meaning, you, Sir, from your situation, perhaps know; by us, at our distance, no conjecture can be made, but from such details respecting lengths of time, compared with lengths of work and space, as gentlemen themselves have been pleased to supply us with.

I say from lengths of time, &c. The twenty-first day of April is the day of the date attached to their preliminary discourse: and thereupon come the authenticating signatures: latest day allowed for the sending in of remarks, the 1st of July then ensuing: interval, two months and nine days. The document, to which on that day these signatures were affixed—in what state on that same day was it? in the manuscript or in the printed state? If in the manuscript state, then to find the

time left for distribution, receipt, and composition and transmission of remarks, will be to be deducted the time employed in the printing of the work : of a work containing in the preliminary discourse 20, in the body of the work 248, 4to pages. In either case, it is from “ the secretary of this same committee,” or “ *through the medium of the Gobierno,*” the septemvirate of Ministers, that the packets had to go : to go to the utmost bounds of your extensive country, not very advantageously distinguished for the goodness of its roads, or for the facility of its communications of any kind. Now suppose one of these packets arrived at the residence of the official person to whom it has been addressed : thereupon, whatever further distribution it can have has to wait his leisure, and the determination of the individuals, within whose reach the several copies shall be placed, will depend more or less upon his choice : upon his choice, either singly or in conjunction with the individuals, whoever they may be, in whom he sees his necessarily consultable colleagues.

Now, Sir, within any such space of time, taking it at its maximum, to this display of condescending magnanimity, what was the sort of return—the only sort of return—that could have been looked for? Indication given of particular imperfections, with or without indication of means of remedy, grounded on the separate consideration of the several articles? could any such instructive indication have been of the number of the communications that were expected, or of the communications that could have been made? No, surely. But if not, what others? The answer is sufficiently obvious. In the form of addresses, laudatory orations, conceived in the most general terms, and vying with one another in intensity of admiration as above : of time for these, whensoever inclination had place—for these in any number, there could be no want : for no remarks of the other cast, in a condition fit to make their appearance—for no remarks of any such unwelcome cast, even supposing inclination ever so alert, could there have been any thing approaching to a sufficiency of time.

Thus it is that, independently of all those other securities, under the ingenuity thus displayed, the mere circumstance of time served to secure to whatever communications could be received, that laudatory character which, if any, it had been determined they should possess.

Praise was the one thing needful : praise was a thing gentlemen were determined to have. This I have been forced to say over and over again. But what I have not yet said, or, if I have, not yet shewn, is—that for fear of accidents, some they were determined to have that should be of their own making. I have spoken of the auction, of the lots to be sold at it, and of the prices in expectation of which the lots were put up to sale : I have spoken of their being themselves the first bidders, and of their bidding as being the price at which each lot was put up. Be pleased now, Sir, to look at the terms of it.

“ It will be worthy of being reckoned (says p. xix.) among the most “ celebrated Codes of cultivated Europe : it will merit the esteem of “ wise nations ; it will merit the gratitude of the Spanish nation : it

“ will merit the veneration of the present age ; it will perpetuate the memory of the legislature of 1821 in all future generations.” Now what, Sir, is the work thus spoken of ? What is it but that which has been the fruit of the united wisdom of the gentlemen themselves, who are pleased thus to speak of it ?

True it is, that before it has been raised to this pitch in the scale of excellence, not to speak of the remarks sent in, in no time, as above, it will have had the benefit of such remarks and consequent amendments as shall have been made by the legislature at large : but the remarks and amendments made in it by the legislature, what will they have had for their groundwork ? This same work of the gentlemen in question : this, and nothing else. Now what at the utmost can be the amount of any alterations, which, after any thing like an adequate discussion, can by possibility be made within the quantity of employable time, so anxiously and effectually narrowed as it has been by the Constitutional Code ? Time sufficient for adopting each several article by acclamation :—yes ; even on the supposition that before the acclamation each article is not only to be read, but read well : for this operation the quantity of time not applicable to the business may be sufficient. But suppose any thing that could be called a *discussion* to have place, long before the first title could have received any tolerably well-considered amendments, the whole quantity of time applicable to the business will have been consumed.

All this while, self-abasement there is—and that in no small quantity as well as intensity : magnification of the burthen, and of their inability to bear up under it : great reliance professed in the assistance looked for from without ; looked for from the zeal, not only of colleagues and fellow citizens, but of foreigners. Speaking of the heavy charge (*la pesada carga*) which they felt pressing on their shoulders, and of the debility of those same shoulders, (“ *que gravitaba sobre sus debiles hombros*,”) they speak on the other hand of the alleviation which they promise themselves from the assistance of well-informed men of divers descriptions, concluding with *estrangeros*. But all this is in p. xi. : and page xix. is the page in which, this self-confidence having in the interval risen to the degree just mentioned, the desire of receiving assistance from strangers gives way to the anxiety for the exclusion of it.

The self-diffidence has the air of an introduction, employed to prepare the way for the self-confidence. The self-diffidence looks as if drawn from some treatise of rhetoric ; the self-confidence as if drawn from some other source.

Such as you have been seeing, Sir, is gentlemen’s persuasion of their own appropriate aptitude ; thus transcendant and consummate is it in their own eyes ! But, not to speak of their colleagues in the legislature, their constituents,—if eyes they have, what will it be in the eyes of their constituents ? For the support of any such claim, not a particle of ground, as far as I can find, have they, any of them, in any shape, at any time, made any where. Right of succession ? can *that* be

their ground? Impossible: for you will see how energetically they have negatived it. If *that* were their ground,—at the very lowest point, if they themselves are to be believed, would their station be in the scale of aptitude. If to their judgement, if to their pointedly declared judgement, any confidence is due, down to the moment at which this function devolved upon them, never can there have been any thing more consummate than the inaptitude, by which the productions of all who have gone before them in the same track have been characterized. Their constituents—what will they say to them? The assent of their constituents—will *that* be given to this judgement of condemnation, to a condemnation so severe, so universal, and at the same time so pregnant with practical inference? Well, suppose the assent given. The gentlemen themselves—what will they be the better for it? From this rule, sweeping as it is, the confidence with which they look for an exception in their own favour is indeed entire. But this confidence—on what ground does it stand? None, as I have already said;—none whatever have they made for it. Of their aptitude, of the existence of which in their imagination every body stands persuaded—persuaded, as if it had been made manifest by the strongest evidence, what evidence have they to show? Have they so much as their own evidence? Not they indeed: not so much as their own evidence: unless an event altogether supernatural and miraculous be to be believed: believed upon the ground of this same evidence. True it is, that while page xix. was writing, their persuasion of their own aptitude was such as is there described. But, at the time when page xii. was writing,—what was it? This too you have seen: so that, if they are to be believed, the change from a state of self-lamenting debility to a state of exulting vigour, took place within the interval occupied by the composition of these seven pages.

It is from Spaniards, be pleased to observe,—from these same Spaniards, that, with a declared exception in favour of themselves, and one other which the rules of politeness could not fail to add in favour of the company present, and a presumable one in favour of the author of the Constitutional Code, this assertion comes of a universal state of inaptitude, with reference to the work of legislation on the part of all Spaniards.

So much for these Spaniards. Now, as to this same point, what would naturally be the judgement of an impartial foreigner? As, down to this moment, according to their own conviction, men born and bred under Spanish government have been in so eminent a degree unskilful, the probability is, (he would say,) that even now, at this moment, they are not so consummately skilful, that assistance from abroad should be peremptorily rejected: rejected, under any such notion as that of its not affording so much as a chance of being of any use.

On their own assertion, as you have seen, rests the notion of their own aptitude: upon their own assertion, and that a self-contradicted one: for to no other proof have they so much as made reference. Of the inaptitude of their predecessors this notion stands on somewhat better ground. In proof of this, they have given statements and refe-

rences, of which I cannot resist the temptation, Sir, of presenting you with some specimens. Scarcely can language furnish expressions more energetically declarative of consummate worthlessness. The essence of the national legislative wisdom they found concentrated, they inform you, in a compilation—the work of the then impeccable and infallible, but now extinct Council of Castille : a mass composed (say they p. xi.) of collections made with a view to the amendment of the law. Disgust is the sensation declared to have been produced by its contents : a parcel of rough drafts, loose remarks, incoherent and undigested pages : dissertations half religious, half political : extracts from various penal laws, with notes exhibiting coincidences and repugnances. Apparent destination of the whole, furnishing patchwork for insertion into a new edition of the statutes at large. (*Recopilacion.*) Plan, the old plan : “ salutary innovation, none : convenient reform, none : sole object, preserving and giving support to the antiquated and vitious system : basis, the same : punishments, the same : with a vast heap of laws and titles unsuited to the present day.”

Under the notice of reform, the best thing that had been thus proposed to be done was—the giving a new edition of the old system in the old spirit, and upon the old plan : of which old system they had already, in p. vi., spoken in terms in which every vitious quality a system of law is susceptible of, is spoken of as exemplified by it in the highest degree conceivable : incomprehensibility in the style, absurdity and iniquity in the regulations, atrocity in the punishments employed for giving effect to them ; and so forth.

At the end of what is said of the above plan for the amendment of those same laws (p. xii.),—that the spirit of them may be anticipated from the nature of the subjects, examples of those subjects are brought to view.

“ Holy Trinity—Catholic faith—Jews, and their expulsion from the kingdom—Moors and Moriscos—heretics and persons excommunicated—diviners, sorcerers, and soothsayers—oaths and perjuries—sacrilege—money-lending and usury—eccentricities of the sexual appetites in respect of species and sex : these and others which” (they conclude with saying) “ ought not to have any place or direct insertion in any good criminal Code.”

Thereupon, Sir, comes a natural question :—what answer shall I give to it ? The depravity, so unreservedly ascribed to the whole body of the law—of the whole of the law then and even still in existence—by what causes was it produced ? Was it not by sinister interest ? by interest-begotten prejudice ? by authority begotten prejudice ? by inbred intellectual weakness, the fruit of bad education, in a country into which no good book, unless by stealth, could ever penetrate ? of a mind-debilitating and mind-perverting system of education, and those habits of thinking and acting, that could not but have kept flowing from it throughout life ? All these causes of inaptitude—is it in the nature of man, that, at any point of time whatever, the influence should all on the sudden cease ? The explosion, by which some of the instru-

ments of tyranny were driven from about the throne, and some of its victims cast into their places—this or any other political convulsion, is it in the nature of it to change with equal rapidity the whole texture of men's minds?

Gentlemen speak of new lights (p. vii. ix. xix.) : even the King's Proclamation to the Ultramarines (April 27, 1820) speaks of new lights. It was by these new lights (or if not, by what else?) that this self-confidence, of which, Sir, you have been seeing such abundant testimony, was inspired. But, these new lights—from what sources were they derived? From Spanish sources? No : even by gentlemen themselves this supposition, you have seen, is energetically negatived. From what sources then? From what but foreign ones? Yet, that from these sources—from the only sources, from which the lights which form their sole dependance have ever come—any fresh lights should come, this is what they cannot endure the thoughts of.

Instead of eulogy, suppose melioration the thing desired,—what, in advertising for remarks, would have been the course taken? Would it have been any such close course? No, Sir : it would have been a course as open as the nature of the case could possibly have admitted. “Send in your remarks,” (it would have been said,) “send in your remarks, whoever you are, they shall be printed : not only to our eyes shall they be presented, but to the eyes of all our constituents ; of all our and your fellow-citizens ; in a word, of all mankind ; of all those beings, on whose condition, in respect of happiness, your remarks will exercise their influence : exercise it? Yes :—in proportion to the value possessed by them, in the first place in the eyes of the selected and official judges, in the next place in the eyes of all men sitting as judges in the tribunal of public opinion. Send in, each of you his work, without name or other token, by which, antecedently to the time for its being put to use, the judgement passed upon it might be perverted : perverted by good or ill will as towards the person of the workman. Send it in without any such public notification : and be assured, that if, for drawing aside the impartiality-securing veil, any private intimation be conveyed,—the avenging eye of the public will be on him by whom the corruptive information is conveyed, and on him, whoever he be, on whom it is productive of the effect it aims at.”

P.S. I should be curious, Sir, to know, if the thing were possible, how many and what the communications are, that, in pursuance of the invitation to send in remarks on their draught, have been received by the legislative committee : received, antecedently to the appointed day, July the first, or at any time since : what received, and from what public bodies, and what individuals respectively, sent in, and from what places : and, of those received, what have been printed and published for the information of constituents, beginning with the people of Madrid. It might to any one be matter of curiosity, to say no more, to see what sort of agreement there has been, between the facts and the inductions above hazarded in relation to them : hazarded by a man, whose eyes or ears no positive information whatever had ever reached.

LETTER III.

On the course taken for preventing, by means of Punishment, eo nomine, all effectual Indication of Imperfections in the existing political System, the proposed Penal Code included.

SIR!—THE efficient power of the matter of reward is great, but its applicability is limited: it is limited by the limits which the nature of things has set to the quantity of the matter of good to which this destination can be given, and by the number of the persons to whom it is possible to flatter themselves with the hope of a share in it. In the present instance, their number falls short—very short—of the whole number, of those on whose part, for the attainment of the end, acquiescence at least has been regarded as necessary. To produce acquiescence at the hands of the vast majority, no instrument of less force and applicability than punishment was looked upon as sufficient.

Follow a few samples of the use made of it.

Of the acts marked out for punishment, one is—*that* which consists in the endeavour to make an *alteration* of any kind in the political constitution of the Spanish Monarchy. For this offence, the punishment appointed is death. The article, by which the anxiety to secure obsequiousness is thus expressed, is the very first in the whole Code: and, as in this, as in any other work, the commencement is that part to which the attention of the workman will naturally have been most closely applied, it may, at least without intentional injustice, be taken for a sort of sample of the whole. Whatsoever may have been the design,—here already, so far as regards effect and tendency, two intimately connected objects may be stated as being in a certain way provided for: namely, the securing *order* in the *legitimate* style, and the keeping at a distance two troublesome sets of men—impartial critics, and impertinent and presumptuous competitors.

Indication of alleged imperfections, indication of arrangements calculated to effect the removal of those same imperfections, indications of other Codes in and by which the removal or exclusion of those same imperfections has been effected—of indications of any one of these three sorts separately, at any rate of any two or of all three conjunctly, if the design be not to produce *alteration* in the system of which they are the subject, I know not what design they can have.

In the midst of all the care thus taken of the liberty of the press, an apprehension appears to have presented itself: an apprehension, of a certain overweening scrupulosity, to say no worse, on the part of this or that judge, the effect of which might be—to exempt the “*traitor*” (for such is the name given to the offender) from the lot so justly merited. For the tranquillizing, as it should seem, any such apprehension, (for in whatever I say in regard to any of the designs that seem to be indicated in and by this Code, I speak with unfeigned diffidence,) for greater security at any rate,—by article 213, provision is

made of a more lenient visitation : six years seclusion in a fortress. Nothing more than this, except that the situation of the fortress may be, and is to be, in one of the islands : the quantum of the suffering being accordingly susceptible of such undescribed and undescribable additions, as the case may be found to require, without any of those unsuitable alleviations, which the eye of so troublesome a public as the public of Madrid, might be disposed to look out for, if access were possible to it.

True it is that, to the sort of offence which seems to have been in view in both cases, the wording given in this latter case is (by article 213) not exactly the same as that given in the former case (by article 191). In that former case, a characteristic word is *alterar*, to alter : in this latter case, *guardarse*, to be kept : but that, by this change in the language, any change is meant to be made in the idea conveyed, is more than I can see.

Not that, in this case any more than in the other, I can take upon me to say, but that, in the view taken of the matter by this or that person, in the situation of legislator, or in the situation of judge, a milder might eventually, in preference to the more efficient interpretation, be the proper one. But here comes in the misfortune, if not the policy : two periods are here in question : the period anterior, and the period posterior, to the sanctionment of the law. To the anterior period, lest legislator, or constituents should be more or less alarmed, the milder interpretation is, without doubt or difficulty, the best suited. Comes the posterior period, and then, according as the decision falls to the lot of this or that judge, and according as the side, in support of which the obnoxious act has been done, is the wrong side or the right side, the interpretation put upon the words is the milder of the two, or the more efficient.

When confronted with some of the other articles, by which tongues and pens are endeavoured to be tied, this article 213, with the word *guardarse* in it, throws me into no small perplexity. By this article, every Spaniard, who, by word of mouth or in writing, shall endeavour to produce any such persuasion (*trature de persuadir*) as that, in Spain or in any of her provinces, the political Constitution of the monarchy, in the whole or in part, ought not to be kept (*guardarse*), is to be chastized (*castigado*) as a *subversor* of that same Constitution in the first degree, (whatever he meant by *the first degree*, for the explanation of which no reference do I see,) and suffer imprisonment for six years : which, if it be in the Peninsula that he has been condemned, is to be in some fortress in one of the adjacent islands, as above : not to speak of *et cæteras*. But, by article 191 as above, if a man do but *conspire* to *subvert* this same Constitution (*trastornar*), he is to suffer death : much more, surely, by parity of reason, must he, on the assumption made by that same article (213), namely, that he has actually been a subversor of it, which being admitted, he, whether the fact be so or not, is to be deemed and taken to have subverted it. Under the two articles taken together, what then is to be done with him ? Under

article 213, he is in the first place to be put to death,—put to death in the first degree, or put to death as if he had been (though he has not been) a subvertor of the Constitution in the first degree: whatever is meant by the first degree, which is more than I can take upon me to divine: and, when the breath is out of his body, then it is that he is to be shut up in the fortress, and so forth, as above.

Now, Sir, suppose prosecution under these two articles, one or both of them. Figure to yourself advocates pleading, and think what a widow's cruize of learned arguments! learned arguments upon the proper meaning of the two momentous words *trastornar* and *subvertir*, whence *subversor*: learned arguments, for the purpose of settling whether the two modes of action, thus differently designated, are different or the same.

But two articles after that, comes another (Art. 215), according to which every Spaniard, who, by word of mouth or by writing, propagates any other *maxim* or doctrine, which has a direct tendency to destroy or subvert (*destruir ó trastornar*) that same Constitution, is to suffer imprisonment: imprisonment, from two to six years, besides loss of employment, and so forth; but nothing is here said of fortresses or adjacent isles. As to *other*, it means (as it should seem, though this is not said) *other* than what is specified in the last preceding article (214). More learning, poured forth upon the question, wherein consists the difference? the difference between the endeavouring to persuade men that the Constitution OUGHT *not to be kept*, and the *propagating a maxim or doctrine tending to destroy or subvert that same Constitution*. Supposing a difference, the latter of the two offences seems, to a plain understanding, to have in it the largest dose of ill-will, and, if there be any mischief in the case, of mischief. For my own part, I have had the misfortune to conceive, and the temerity to declare in print, an opinion that in this same Constitution there is this and that article, that had better *not* be kept than *kept*: but, notwithstanding all the imperfections I think I see in this same Constitution, I set much too high a value on it to use my endeavours, or so much as to harbour a wish, to see any such fate as can be aptly expressed by the words destruction or subversion, befall any part that to me seems good in it.

Not more than three articles after this, comes article 218, which says, “Whatever person” (and this is not confined to Spaniards) “whatever person, by word of mouth or by writing, shall provoke any one to the non-observance of the Constitution, *with satires or invectives*,” shall suffer—what? death, and then imprisonment, as above? Oh, no! in the course of half a page, all such severity seems already to have been forgotten. What he is to do now, is to pay a fine of from ten to fifty dollars (*duros*), or else suffer arrest (*arresto*) for from fifteen days to four months; and, if he be a public functionary, the punishment is in both cases to be doubled.

To so plain a man as myself, the endeavouring to provoke men to a purposed *non-observance* (*inobservancia*) of the Constitution,—under which words I should suppose that any open and avowed disobedience

to this or that one of its ordinances would be regarded as comprehended,—seems to have rather more of mischief in it than the using a discourse, the object of which were simply to produce an opinion, that it ought not to be kept; under which words, it would seem to me that any discourse might be comprehended, having for its object to show that it would be for the advantage of the nation, that by the competent authority, this or that article in it should be repealed or altered. If so, I do not see, how, in any view commonly taken of the matter, how it is, that by the employing on this occasion *satires* or *invectives*, (whatever be meant by *satires* or *invectives*, words loose enough to call forth learning in abundance,) how it is, that by the employing of poisoned weapons in either of these shapes, the malignity or the mischievousness of the offence, if it has any, should be diminished.

It seems to be by some principle, though from a principle which I am altogether unable to reach so much as by conjecture, that the comparative encouragement thus given to *satires* and *invectives*, was prescribed. In Article 327, compared with that which stands next after it, I find another proof of the influence of this same principle, whatever it be. By Article 327, the offence described is that of him, who “by word of mouth shall excite or provoke directly (*directamente*) “to disobedience to the Government (*Gobierno*) or to any public authority.” This is one branch of the offence: then comes a second, “or to resist or impede the execution of any law, or other act, of those” (*acto de los*: quere, whether those *acts* or those *persons*?) “expressed (*espresados*) in Article 325.” So much for the description of the offence. Thereupon comes the description of the punishment: “reclusion or prison (*prision*), for from six to eighteen months, if the excitation or provocation has not taken effect: in the opposite case, (so I understand *pero en este caso*,) from one year to four years.”

Thus much for Article 327, in which nothing is said of *satires* or *invectives*. Then comes Article 328. Here the description of the offence agrees, as to part of it, with the description given, in the last preceding article, of the first branch of the offence created by it. He who “by word of mouth or by writing” (as before) “shall provoke” (the word *excite* is now omitted) “with satires or invectives to disobedience to any law, or to the Gobierno, or other public authority.” So much for the offence. Now for the punishment. Instead of *reclusion* or *prision* for from six to eighteen months, *arrest* for from fifteen days to two months at the utmost, with an alternative of a mulct of 180 dollars, with loss of employment, &c. if the offender be a public functionary, &c.; the wording and pointing being so ambiguous, as to leave it at the option of the judge to let off the offender with the fine, in case of his not being a public functionary, &c.

Thus then you see, Sir, if, in the endeavours used by him to provoke men to the disobedience in question, a man abstains from all satires and invectives, he may suffer as much as eighteen months of reclusion or imprisonment, nor can he suffer less than six months; but if, on this same occasion, he indulges himself in *satires* and *invectives*, in this

case his *arrest* cannot last longer than two months, and may be limited to fifteen days.

Note, that as to what is meant by the laws or other acts, said as above in Article 327, to be “expressed in Article 325,” you are sent for it of course to Art. 325: when you have got there, you are sent to Article 290; and when you are at 290, you find yourself in a labyrinth, the clue to which I should scarce hope to be able to find, if my life depended on it; but at the end of it what I do find is four years of reclusion. Next to this article, and for the declared purpose of an explanation of it, comes Article 291: for the meaning of which you are further sent to four articles more, all in the lump, namely 326, 341, 353, and 356: when you are at 343, you are sent to 346, and to 344; when you are at 346, you are sent to the whole cluster of articles contained in Title 3 of Part 2; and to another cluster, contained in Chapter 3 of Title 6 of that same Part 2.

In the entanglement, produced by the indirect mode of designation above exemplified, may be seen a sort of instrument, of which, considered as applied to the field of legislation, the gentlemen in question, so far as recollection serves me, are the inventors. In some instances, the reference is in the simple form: from one article you are simply sent on to another: and here you suffer nothing worse than useless labour. But, in other instances, and these most unhappily numerous, words significative of *relation* are employed, equally (*igualmente*) in the *same* manner. Whatsoever may be the decoration added by this contrivance, not small is the price paid for it: paid for it by the subject citizen, in the shape of serious inconvenience suffered. By it, is thus imposed upon the reader, the task of comparing the article which is clearly to the purpose, with another which may be to the purpose, or not, as it may happen; and in either case the task of establishing the fact of the identity of signification, or, in case of difference, the nature and extent of the difference: neither in the memory nor in the conception, can an article be lodged, without being coupled with another, or others, which do not belong to it. Thus, a burthen, which, taken at its *minimum*, is but too heavy, receives from this artificial contrivance an indefinite increase: and, as the result may, in each instance, be a degree of perplexity and uncertainty, to which no limits can be assigned, as little can any limits short of death be assigned to the mischief, to which, in case of an interpretation deemed erroneous by the judge, the citizen may be subjected: for, such may be the mischief, in a case in which death is the appointed punishment; which case, as above, is that provided for by Art. 191—the very first of the offence-creating articles in the Code. The citizen, when thus perplexed, if rich enough to take the chance for saving himself, repairs to a lawyer: which lawyer perhaps finds himself equally perplexed. But, for the suffering of the perplexed lawyer, compensation, to his own satisfaction, is made: while by his unhappy client, in addition to his perplexity, comes, instead of compensation, the burthen of affording the compensation to the professional man, by whom the perplexity has or has not been re-

creased, and by whom security against the mischief has or has not been afforded. (*Assimismo*) as well (*tambien*) and so forth : and here, to the simple labour are added, not unfrequently, perplexity and uncertainty to an indefinite degree.

Such is the entanglement that has place, when there are but two articles thus unnecessarily and incommodiously connected ; when, with the article with which you have to do, no more than one other with which you have nothing to do, is linked. What then must be the embarrassment, when, from the only one with which you have any thing to do, you are sent, on pain of not knowing what it means, to a second, with which you have nothing to do ; from the second to a third ; from the third to a cluster of others ; from each of them perhaps to another or others ? But, such is the frequency with which this mode of designation occurs in this same Code, that scarcely have I opened a page without finding instances of the employment given to it. Quite sufficient (one should have thought) are the difficulties inseparable from the subject, without its being clogged by any such useless and factitious instruments of uncertainty and embarrassment.

Having no example in any thing that was ever written on the subject, nor any particular use that I can discover, this mode of expression presents itself to me as having something of a *colloquial* cast : as such, it operates in confirmation of the suspicion before intimated, that in the course of gentlemen's studies, the fascinating art of *rhetoric* has obtained rather too much of their attention, at the expense of the repulsive art of *logic*.

Thus much, by the by, for a specimen of the use made of *references*. But, of the proposed Code there are certain parts, which, it should seem, gentlemen make sure of finding lodged in the memory of every individual, who stands exposed to the temptation of committing an offence in any shape. Of these parts, one is—that in which an enumeration is made of the several modes of punishment. Being able to read, and having time sufficient to dip into some parts of this composition, though not to read so much as perhaps a twentieth part of it, my good fortune had conducted me to page 10, in which that enumeration is commenced. I was thus preserved from an error into which I might have fallen otherwise. Seeing how far this composition was from any steady observance of that indispensably useful instrument of certainty in a law, *ideis eisdem verba eadem*, to the same ideas the same words, the words *reclusion*, *prision*, *arresto*, might have passed upon me, as meant to be designative of the same punishment. Turning, however, to Art. 29, I found that *reclusion* is one sort of punishment, the scene of it being a house of *hard labour* ; *prision*, another ; the scene of it a *fortress* : both of them ranged under the head of *corporal punishments*. Looking for *arresto*, I found it, to my no small surprise, at a distance from the other two, and under the head of *punishments not corporal* : and in explanation of this word, it was that I found, but in words of the loosest texture, intimation given of some *further* punishments, which were to be considered as attached to all punish-

ments ranged under the head of *corporal punishments*. For the conveying of this intimation, the words *civil effects* are the words employed; and for showing what is to be understood by these civil effects, no reference do I see.

In my Code, every word, the signification of which is not beyond all danger of dispute settled by universal usage, receives a definition: and all words so defined, stand distinguished by one and the same particular *type*: and thus, by means of an alphabetical index, all ambiguity and obscurity may be cleared up in the shortest space of time. In the Code is thus contained a Law Dictionary: that dictionary a complete one, and having the same authority as the text, with every word of which it has been confronted.

Sir, what you have seen hitherto, is no more than a part of what I was led to by Art. 191, being the very first of all the articles in which any description is given of particular offences. When I have done with this same proposed Code, scarcely perhaps shall I have read one twentieth part of it. To what end should I? No use would there be in my reading it, any further than as I write about it: and if my determination was to go through with it, and say all that it occurred to me to say of it, my life would assuredly be at an end, before my comments were at an end. Sir, you have already had before you that one specimen: before I have done, you may perhaps have before you a few others. What if the whole work should be found to be of a piece with these specimens of it?

“*Oh! but this is not what we meant: we meant so and so.*” This is what I figure to myself gentlemen saying, should it happen to you, Sir, to present to their view this or that passage, in which it might happen to them to suspect that a change might be made, not altogether to its disadvantage. “Gentlemen, only from what the Code itself says, not from what, either in private or even in public, you may, any of you, be pleased to say, your meaning was while penning it,—only from what, in the eyes of every body, the Code itself says, to the exclusion of whatever may have been said of it by this or that individual, can the meaning of it, in any part of it, be understood.”

Sir, there is a very dry, dry indeed, but at the same time not unuseful branch of art and science, denominated *Logic*: upon it, where government is the field of operation,—upon it, as well as upon politics and morals,—hangs life and every thing else that man holds dear to him. Upon it, depends the choice of words: of those words by which, according to the interpretation put upon them, man is destroyed or saved. If, in the instance of the gentlemen in question, this wearisome and unamusing art has been among the objects of their studies, the success of those studies has not, I fear, been quite so great as their constituents may, perhaps, see reason to wish it had been. Of all the several articles, by which either particular delinquency is described, or particular punishment appointed, the very first (you see, Sir,) is among those in which this laxity on the one part, so incompatible with security on the other, has been manifested. To inquire how far onwards a habit so unfortunate has extended its influence, belongs not to the present oc-

casation, nor on any occasion, to any design of mine : to speak of it in the gross, in my view of the matter, it is a radical indisposition, having its root in the *method* which has been pursued, and not curable, but by another and very different one. Of this imperfection, if it be one, I may, perhaps, have occasion, Sir, to submit to you, here and there, a few other indications.

Opposite stands a very brilliant and fascinating art, called *Rhetoric*, in which the preliminary discourse I have had such occasion to advert to evidences no ordinary proficiency : if the time bestowed upon this instrument of fascination had been bestowed upon the instrument of sound instruction, the character of the proposed rule of action would naturally have been somewhat different, and as far as regards national peace security and contentment, would not (so it seems to me) have been the worse. If by rhetoric men are sometimes saved from destruction, as well as sometimes consigned to it, it must be by logic, and in proportion as it is well applied, if they are secured against it.

In their preface (page xii.) Gentlemen state the manner in which the whole of their work was parcelled out amongst the five. If so it be that of that same work, the method is not altogether what might have been wished, of whatever imperfection there may be in it, one cause I am inclined to think might be found in this partition treaty. In the observations made in support of my Codification Offer, Section 5, (Draughtsman why single, &c.) the disadvantages thought to be attached to every such plan of operation are brought to view.

Apropos of “doctrines or maxims.”

What if the *doctrines or maxims*, call them which you please, “the direct tendency of which is to destroy or subvert the political constitution of the monarchy”—what, if these doctrines or maxims, for the propagation of which every Spanish propagator is by article 215, to suffer imprisonment from two to six years, with et cæteras, should be found in the Constitution itself? In such a case is the punishment to receive an inexorable application? By its doctrines being to be found in that place, does it the less come under the description here given of the offence? For an example of a thus destructive or subversive doctrine or maxim, take the doctrines or maxims by which, in articles 4 and 13, the greatest happiness of the greatest number is stated as being the only proper end of government. For an example of the tendency of such a doctrine to destroy or subvert the political constitution of the monarchy, namely, by putting the office of monarch out of it, take the following consideration. By a statement which I have before me, taken in the years 1787, 1788 from Spanish sources, the expense of maintaining that one functionary was about one fourth part of that of the whole expenditure of government : that is to say, the ordinary, avowed, settled, and officially stated expense, over and above whatever was extraordinary and unavowed, though not the less constantly repeated. At present I should not expect to find it quite so much : but, be it what it may, an inference presents itself, as one, the conclusiveness of which, would not be materially varied by any denomination, which that portion

of the public expenditure has experienced, or seems to be in any likelihood of experiencing. The giving any such application to any part of the public expense, how (may it not be asked?) is it conducive to the greatest happiness of the greatest number? Especially when the whole income is not sufficient for the effective protection, of the people against the neighbouring pirates, not to speak of the insurgent privateers, or of the expense of defending almost all Ultramarina against its inhabitants.

Of the office thus endowed, what is the specific beneficial effect produced in any shape? What effect more obvious or more indubitable, than the giving establishment to a set of men, who, partly by legal power, partly by force, partly by corruption, have it so completely in their power to weaken, and in time to destroy, the *constitutive* power given to the people?—to destroy it? Yes: and through the medium of the share possessed in the *operative* power by their representatives? Two authorities does this projected Code exhibit—two conflicting authorities, who the one of them with one portion of it in hand, the other with that which is next to it, will, if it be but sanctioned and carried into execution, be the waging a war of extermination, till the one or the other of them is exterminated.

In the political constitution of the Anglo-American United States there is no such office: and, for this omission, in what respect is any body the worse?

Of the arrangements, thus proposed for putting to death all persons, by whom any conjunct endeavours shall have been employed for remedying any imperfections in the Constitution, what was the object? To preserve the liberty of the nation, if the gentlemen in question are to be believed. Contrary to the liberty of the nation, according to them, is any such endeavour: for, at the very head of the offences against the liberty of the nation, do I see it placed—Tit. 1. Cap. 1. “Capítulo “Primero. De los delitos contra la libertad de la nación.”

As to this word *liberty*, it is a word, the import of which is of so loose a texture, that, in studied discourses on political subjects, I am not (I must confess) very fond of employing it, or of seeing it employed: *security* is a word, in which, in most cases, I find an advantageous substitute for it: *security* against misdeeds by individuals at large: *security* against misdeeds by public functionaries: *security* against misdeeds by foreign adversaries—as the case may be. In the present instance, if, by the word *liberty*, as thus employed, *security* in any shape—security against persons of any description, considered in the character of public functionaries, or persons acting under the orders, or in support, of public functionaries—was intended and meant to be afforded,—it must have been *security* not only for individuals, but for a certain class of public functionaries, against enterprises on the part of another class of public functionaries. Be it *security*, be it *liberty*, that was the blessing here in view, I should not, I must confess, have supposed, that any thing in favour of it had been intended to be done, by any such arrangement, as that to which I have had occasion, Sir, to request your attention, had it not been for the assurance given in this same title.

Seeing the course taken by Gentlemen in their endeavours to preserve the "*liberty of the nation*," I could not but be alarmed, when I found, that—not content with preserving in *their* way the liberty of the *nation*, they had taken up the determination to preserve in the same way the liberty of the *press*. I should have said, indeed, the preservation of that liberty against abuse. Still, however, it is the liberty of the press that, in a section of the Code exclusively allotted to the purpose, I see taken in hand. "Titulo noveno. De los delitos y culpas de los impresores, libreros y otras personas en el abuso de la libertad de imprenta. Cap. único: Art. 172." Such being the hands into which I saw this instrument of liberty taken—taken by means of a body of arrangements separated and distinguished from all others by a title of its own, I could not but tremble for the fate of it.

Nor, after a glance at the contents, has my anxiety been removed. Sir, I know of one *individual*, of whose desire to see the press in possession of all that liberty which is conducive to the greatest happiness of the greatest number, and of no more than all that liberty, I cannot entertain a doubt: it is your humble servant. In no Code drawn by him will there be any such title. I know even of a *government*, of whose desire to see the press in possession of all that liberty which is conducive to the greatest happiness of the greatest number, and of no more than all that liberty, I cannot entertain a doubt. It is the government of the Anglo-American United States: Sir, in their Code, there is no such title.

For the state of the law in that seat of ever undisturbed internal peace, concord, tranquillity and amity, I must e'en beg leave once more to refer you to that one of my pamphlets, which has for its subject the Liberty of the Press and Public Discussion. Under that government, from the 14th of July 1798, to the 3d of March 1801, there existed a law having much the same objects as Titles i. and iii. and ix. of the proposed Code. Viewing the whole of it together, and comparing it with the matter of those titles taken together—viewing both in the lump (for of any such task as that of analysing either of them there would be no end) its utmost rigour (you will see) was tender mercy. Being, however, the whole of it, plainly useless, and much worse than useless,—creative of a disease, which otherwise would not have had existence,—having but one good thing belonging to it, which was its temporariness as above,—it was suffered to expire: the authors of it, at that time the leaders of one of the two then contending parties, lost thereby the public confidence, and with it their political influence. That party (the aristocratical) having expired,—ask there for *parties*, no such thing will you find.

In every Code, in which I see any such title as *the liberty of the press*, I look of course for the destruction of it. I look to the committee's Code, and I have not been disappointed. In no one of all the Anglo-America United States is any desire more universal, or more intense, than that of seeing this liberty preserved. Accordingly in no one of the Codes is there any such title. What I shall have to say on the

subject comes in of course, and no otherwise than in an incidental way, under the head of *offences against reputation*. To offences of this class, where the individuals injured are public functionaries considered as such, my Code, so far from regarding the circumstance as a cause of aggravation, gives some indulgence. The indulgence has for its ground the great importance it is of, that no misdeeds of men in that situation should remain unknown, and the more than ordinary facility, which, in case of the groundlessness of the imputation, they have for defending themselves : for defending themselves, or rather of being defended by others, without having the trouble to defend themselves. See my accompanying tract on the liberty of the press. But this indulgence I confine to the case of *temerity* : for, in the case where the falshood disseminated by the disseminator himself is known to be a falshood, though in this case disproof and refutation are so much more easy to men in power than to men not in power, still I see no need, nor therefore any warrant, for manifesting indulgence to immorality in a shape so mischievous. A distinction which on this occasion I am careful to make, is *that* between *defamation* and *vituperation* : defamation, the imputing to the person in question, the having done this or that specific act of a punishable or disreputable nature ; vituperation, the mere expression of dislike to the individual, in terms of a reproachful and offensive nature. Of these, in proportion as they are understood to be unmerited, the punishment naturally attached, falls of itself on the head of the offender, and with small, if any, assistance from factitious punishment, suffices for the purpose. In case of defamation, the law of England (it is that part of the law which is made by judges and reporters of their decisions) disallows the proof of the truth of the imputation in the character of a cause of exemption from punishment : for the law made by these creatures and dependents of the Monarch, has for one of its effects (it is needless to add its objects) the providing a screen for delinquency in every shape, on the part of themselves, and of their associates in the system of misrule. Bad as it was in principle, even the exploded Anglo-American law just mentioned gives express allowance to this proof.

[*A rule which has been established by lawyers in England, and which I should expect to find adopted by the fraternity in the United States, prohibits indeed, in case of defamation, the interrogation of the party defamed, for the purpose of proving the truth of the fact imputed to him : and prohibits it,—not only in a civil suit in which he is the avowed plaintiff, but also in a criminal suit, which, while it has the king for the nominal, has the individual for the real, plaintiff. My Code allows it in most cases, and in particular where the party defamed is a public functionary, defamed as such. In one of the two abovementioned cases, the prohibition has its foundation in an ill expressed Latin rule, made nobody knows when, by nobody knows who, namely, *Nemo tenetur se ipsum accusare* : as if *confession* were *accusation*. In proportion as laws are tyrannical, this contrivance for giving impunity

(* In the original letter, this passage which is in brackets, was omitted.)

to delinquents is beneficial: nor could I think of expunging it out of any such system of law as in England we have, or from any such as if the force of law is given to this proposed Code, Spain will have: suppose the laws not tyrannical, the rule, and the imaginary law made out of it, is purely mischievous: on better ground, in tenderness to the accused defendant, would all other testimony be excluded: for who is so little likely to give false testimony to a man's disadvantage as the man himself is? But, in such a government as we have, and Spain seems in danger of having, in a word in a government which has for its object the sacrifice of the many to the few, the best thing that can happen is—that all offences that are such merely against government, should go unpunished, and be followed by their designed effect. Of this portentously absurd rule, those, according to whom the greatest happiness of the greatest number is the only proper end of government, lay fast hold, for the sake of the application made of it to offences against government:—to offences against those laws which, having for their end in view the sacrifice of the happiness of the greatest number to the separate interest of the ruling few by whom they were made, would of course, if carried into any thing like full effect, render the greatest number miserable. Lovers of the people cherish the absurd rule, for the sake of this particular application which cannot be refused to it. Lawyers cherish it, for the sake of the protection and encouragement it gives to delinquency in all shapes, giving proportionable increase to the number of their customers. For this reason, in every country, it is the interest of lawyers to see depravity consummate: accordingly in every country, it is, to the utmost of their power, their endeavour to keep or render it so.]

This collection of arrangements, in which such special care is taken of the press—such anxiety manifested for preserving its liberty from abuse,—this collection of arrangements—stands exhibited in 12 articles, namely, those from 592 to 604 inclusive; and occupies 4 out of the 240 pages of the Code. I have glanced over it. The result is—a confirmation of the conception above brought to view: namely, that, at any rate on the 21st of April 1821, *that* being the declared day of signature, the wish and endeavour of the gentlemen in question was, at the prices there expressed in the shape of capital and other punishments, to prevent as far as possible the diffusion of all ideas whatsoever, that should, in any degree, be productive of sensations of an unpleasant nature in their own minds, or in the minds of any person in connexion with them: trusting, as they would naturally do, that by the same interests, prepossessions and affections,—their successors, whosoever they were, would, by so universally convenient an arrangement as this of theirs, be fixed in those same wishes and endeavours: that, in this view, their endeavour was—to keep the eyes of their fellow-citizens forever hermetically sealed, against all written or printed discourses, the tendency of which should be to produce any such unpleasant effect: and that it is in this same view that, by article 602, they have extended the exclusion to discourses, in the Spanish language, printed elsewhere

than in Spain, and by articles 598 and 601, to discourses of the like tendency in any language other than the Spanish, wheresoever printed.

If there be any one foreigner who, more than any other, not to say more than all others put together, has been the object of their jealousy, who can it be, Sir, but your unfortunate humble servant? And if such were their wishes in relation to him even from the first, what will they be, should ever any such provocation meet their eyes, as cannot but be afforded by so unwelcome a proof as this is which is now given in obedience to your commands?

For the purpose of keeping matter such as the above from the eyes of constituents, what then is the punishment which the proposed Code provides? Sir, you have seen already—the punishment of death. From this punishment, fortunately for him, true it is that, by remoteness from your country, the *person* of your abovementioned humble servant is kept safe. But, by the terror of that same punishment, any the most useful of communications which in his eyes it would be worth his while to make, are not the less effectually excluded.

On this occasion permit me, Sir, to recall to your view that same leading article (article 191) in which death is the punishment, appointed for every person by whom endeavours shall have been used to bring about any *alteration* in the political constitution of the Spanish Monarchy. In speaking of that article, one word, nor that an altogether immaterial one, I must acknowledge the having omitted the mention of. This is the word *conspirare*—to conspire. The omission had not for its cause either oversight or any deceptious design: or in short any other cause than the convenience there is in speaking of no more than one thing at a time. No such effect had it (no such effect had the omission I mean) as that of narrowing or otherwise varying the description of the offence, unless, in the breast of a man who is not insane, any such endeavour or design can be supposed to have place, as that of effecting an alteration of the kind in question by his own single power, without aid from any one else.

The truth is—that, on this occasion, it was my own unfortunate case that occupied the first place in my view: for, saving all proper exceptions, such is the nature of man, self will on every occasion be intruding itself. Among my own *endeavours* as well as designs, has been *that* of causing to be printed in the Spanish language and circulated in Spain, written discourses more than one, in relation to which I cannot flatter myself with any the faintest hope, that, in the minds of gentlemen, the sight of them could fail of producing, though to my own most sincere regret, sensations of a cast more or less unpleasant: nor, in regard to some of those same writings, can I help being sincerely apprehensive, that, in the eyes of the gentlemen in question, the endeavouring to give publicity to them, would be the endeavouring to produce an “*alteration*” in that same political constitution.

True it is, that on this occasion, so far as regards my own personal safety, I do not, from any such conception in those or any other

Spanish breasts, see any cause for apprehension. But an endeavour of this sort could not be used without *assistants*: without assistants, who, in the language of the proposed Code, would be *accomplices*: nor, by and between the principal and such his accomplices, could any correspondence be carried on without that which in the same language would be a *conspiracy*. Among these accomplices would in this case be a *translator*, a *printer* and a *bookseller*. Of these the *translator* might possibly be one, who would not be in any greater danger of death, or whatever were the other punishment, than myself: and to the case of the *printer*, the same consoling possibility may be found applicable. Still there remains the *bookseller*, without whose assistants my plot for the contributing, in conformity to articles 4 and 13 of your Constitution, to the greatest happiness of the greatest number of your fellow-citizens, whatsoever in this shape or in any other may be in my power, could scarcely by any means set itself to work. And thus it is, that if the wish that seems to be entertained as to this matter, by the gentlemen in question, as evidenced by this part of their proposed Code, is carried into effect,—mine stands on the verge of hopelessness.

Even if the net, spread by the word *alterar* in article 191, were not sufficient to catch us, (I mean myself and my accomplices,) another net of not much less amplitude, I see spread for us, in the next article, by the words *embarazar sus sesiones y deliberaciones*: penalty, death as before. For, of the arrangements that my temerity might find to propose, what *embarrassment* it might happen to this or that one to produce in the deliberations of the august body, should they ever come under its view, if it were during the time of its having the happiness of numbering the gentlemen in question among its number, I tremble but to think of.

On this occasion, one little difficulty in particular there is, the effect of which could scarcely fail to produce, more or less of *embarrassment* in the deliberations in question, should any endeavour be thought fit to be used for the solution of it. In pursuance of any such mortally wicked design as those above described, should a man content himself with doing what at present I am doing—that is, with the employing a non-Spanish language in the composition of such his political poisons,—in this case, such is the lenity manifested, by article 598, his portion of punishment is to be no more than the *half* of that which he would suffer were it in the Spanish language. *Duros*, yes: *anos*, yes....but I hope I am not using *satire*, and I am sure I am not using *invective*, when I observe, that neither in Euclid, nor in any other book, would gentlemen be able to find any process, for the bisection of a punishment, of which death is to be the result.

One manifestation more, and that a finishing one, of the care taken by gentlemen for the preservation of the press from abuse, remains yet to be brought to view. It is the establishing—Yes, the establishing in regenerated Spain—an *Index Expurgatorius*. An Index Expurgatorius? and by whom composed? composed by no less an authority than

a new species of supreme legislature, proposed to be established for this single purpose : a legislature, in which the initiative function is to be exclusively in the *Gobierno*, (the septemvirate of ministers, every one of them appointed and at pleasure removable by the king) : the initiative function in this *Gobierno*, and the consummative in the Cortes. Of this proposed new legislature, I find mention made—not only in the cluster of articles, which form part of those especially destined to the preservation of the liberty of the press from abuse, namely, in articles 599, 600 : but in that preceding cluster, which has for its special destination the preservation of the Spanish mind from error on the field of religion : and, on both occasions, the existence of an instrument of this sort, framed by the new authority just mentioned, is supposed, and in a manner taken for granted.

It is therefore in their zeal in support of religious truth, that, in the exercise of the conjunct attributes of *impeccability* and *infallibility* above spoken of, this manifestation of zeal for truth in general, in the breasts of the gentlemen in question, appears to have taken its rise : and what cannot be denied, is—that by him, whoever he may be, by whom, for the happiness of mankind, those same divine attributes happen to be possessed, exercise too extensive cannot be given to them. But in proof of a man's being so gifted, evidence, something more conclusive than his own insinuation, nay even than his own assertion, however positive, may, it should seem, not altogether unreasonably be required.

Before this finishing measure for the consummation of political security receive the sanction of law, there is one other thing, Sir, which I could not but be glad to see recommended to the consideration of the august assembly, not to speak of the supremely influential body—the *Gobierno*, of whatever individuals it may at this moment be composed. This is—supposing this extraordinary duty on their shoulders, and any thing like adequate time for discussion allotted to the business,—whether, from year's end to year's end, for the fulfilment of their ordinary duties, there would be so much as a single moment of time left.

I have spoken of *logic*, as an art, which, though not quite so agreeable, has, with reference to the greatest happiness of the greatest number, rather more of the useful in it than the brilliant art of rhetoric. There is moreover another dull and plodding kind of art, which, if a recommendation from me could promise to itself any weight, I would take occasion, from the incident here in question, to recommend to the attention of gentlemen in your exalted station. It is the art of *mensuration* : I do not mean as applied to *land* or *timber*, but as applied to *time* : to time on the one hand, compared with the quantity of business to be done in it on the other. From a want of proficiency in this art, such as it is, two effects, both of them of rather an unpleasant nature, are liable to be produced : the exclusion of good measures, and the adoption of bad ones : the exclusion of good ones, for want of their being so much as proposed for consideration ; the adoption of bad ones, for want of their being in a sufficient manner made the subjects of consideration. If, of this last mentioned effect, an example

should be desired, a not uninstrusive one may, I am inclined to think, be found without much difficulty, in the recently established prohibitive and restrictive commercial, or, as I should rather say, anti-commercial system, under which, trade was to have been increased by the exclusion of customers.

Gentlmen having, in the manner you have been seeing, Sir, shown their sense of the necessity as well as importance of the office of Censor,—having moreover assigned, as and for the whole or a part of its business, the composition and continual completion of this same instrument of legitimate order, I mean the *purifying Index*,—it being also considered how natural, on the part of the inventor of any instrument, the wish is—to see the application of it placed in his own hands,—what if the powers—the whole powers of it were to be conferred on the gentlemen in question, I mean on all five of them, and in a state of exemption from all other cares, during their respective lives? In this power, for further security, might be included not only all actually existing works in their entire state, but all such *doctrines* or “*maxims*,” as, if they were in existence, would be possessed of the “*destructive*” or *subversive* tendency so often mentioned. In this case however, if it were in my power to make conditions, one little condition I would venture to propose to them, and that is,—that they would not insist upon attaching to the publication of the books in question, or of the maxims or doctrines in question, any of those severities, by the proposal of which their religious and patriotic zeal has on the present occasion manifested itself. No, Sir : if in the eyes of the public at large, their intellectual worth be but half as great, as, from the above quoted passage in their preface, it should seem to be in their own, the authority of their names, when employed in marking out for exclusion from all eyes and ears the obnoxious works, will be quite sufficient, without the aid of penal visitation or physical repression, performed in the proposed or any other shapes.

After all, thus much must be confessed :—be the instrument what it may, destroy the instrument you prevent the abuse of it : destroy eyes, you prevent the abuse of eyes : destroy ears, you prevent the abuse of ears : destroy hands, you prevent the abuse of hands : destroy liberty, you prevent the abuse of liberty. Such would be the effect, supposing the destruction total, and thence impartial. But, so far as either the liberty of the press, or the liberty of discourse through the medium of any other instrument, is the subject, the destruction which the gentlemen in question aim at effecting—the destruction, which they even profess to aim at effecting—is not total and thence impartial, but decidedly partial : and being so, the effect of it, in so far as it has any, will be—not to prevent, but to establish and secure, the abuse of the liberty of the press ; in a word, of the liberty of discourse : of the whole of that branch of liberty which they thus take in hand. For wheresoever, by any person, on any controverted point, a judgement is to be pronounced,—what can be a greater abuse of the faculty of discourse, than the keeping all the arguments on one side in a state of suppression, or though it be

but restriction, while those on the other are left in a state of liberty? of absolute, or even though it were but comparative, liberty?

In regard to this matter, one very simply expressible mistake seems, from first to last, to have taken possession of gentlemen's minds, and guided their operations: I mean, the mistaking a *cause* for a *remedy*: the taking, for a remedy to the disease they have had in view—for a remedy and that an indispensable one—that very morbid cause, but for which the disease would not have had existence. Supposing that to be the case, apply the supposed remedy, you produce the disease: burn the remedy, you kill the disease. Such, after a three years experience of the imagined remedy, was the practice of the Anglo-American United States: and, after twenty years of uninterrupted experience, the salutary efficacy of that same practice has received in the face of all mankind as complete perhaps a confirmation, as any practice, political or even physical, ever yet exhibited.

LETTER IV.

On the security of the ulterior means, employed for securing against amendment, all imperfections in the political system, and for preventing the national will from manifesting itself.

SIR,—IN the title of this fourth Letter as it is announced in the first, the words *severity of the* were, I fear, omitted. They are requisite, however, for giving expression to the idea, which, in reviewing that part of the matter and penning a title for it, was uppermost in my mind. On a second glance, along with what bears special reference to that circumstance, I find some matters, of which the same thing cannot, I must confess, be said with equal propriety.

On the other hand, the subject, on which it touches, is one of which special notice is taken in your letter: what is said in relation to it will help to prove the respect with which your commands have been attended to; and whatever may be the offence committed against the laws of method as above, it is on this circumstance I must rely for whatever atonement it may be in my power to make.

Pena de muerte! Pena de muerte! Pena de muerte! By these words, I see, with grief of heart, a war of mutual extermination organized: Code in hand, I see partizans of the King and partizans of the people under the name of partizans of the Constitution, slaughtering each other and thus maintaining order in the legitimate style. No man can serve two masters. So at least I have read somewhere: and I am inclined to think there may be some truth in it. Looking to the people of your peninsula, I see two masters made for them: one all head without body: the other all body without head. No man being able to serve both masters, I can see no man who is safe. In the Anglo-American Union, no man has any master; and there every body is safe.

In that seat of universal security, there were, for a course of years, two parties, and between them war was waged with a fury not to be exceeded, even among you. The weapons, however, were words only, not swords or bullets: “satires and invectives” met in incessant clouds: but they met tax free: no *duros* were ever paid for them: ink flowed in torrents: ink on both sides: but, of blood, not a drop on either side. Little by little, the less liberal party was silently absorbed into the more liberal: finally, there is no party, and now, even in words, it is all peace.

Yes, Sir, between the death to preserve “liberty” (Tit. 1. Cap. 1.) and the death to preserve “Monarchy,” (Tit. 1. Cap. 2.) I see every man between two fires.

Remembering the use made, on a former occasion, of the word *corporation*, as mentioned in my tract on the liberty of the press, &c. I see in Article 191 a somewhat more efficient use found for it. A sympathy, I hope not unpardonable, places before me, on this occasion, my brethren of the Cross of Malta. If they are tired of life, the words “*ò á que se radiquen eu otras corporaciones o individuos,*” may upon occasion help them to get rid of it. But, perhaps, the citizens who, all over the kingdom (if our newspapers do not deceive me,) are still meeting for the purpose of considering what, under articles 4 and 13 of the Constitution, may be most conducive to the greatest happiness of the greatest number, if it were only that they may learn how to give their votes,—may not be quite so eager to see themselves killed, as the Committee seems to be to see them killed: and, if they are not altogether pleased at the thoughts of being killed under the name of citizens, I should not expect to find that the thoughts of being killed under the name of members of corporations would render them more so.

For how many things which they themselves have done, and which I cannot but applaud them for having done, do I not see gentlemen appointing this same punishment of death! the only punishment, the mischief of which is, in case of misapplication, altogether out of the reach of remedy! Right, that which at the moment suits us: wrong, that which does not suit us:—this, or something like it, is it not the principle?

As it is with vituperation and defamation, so, without much difference, is it with sedition, insurrection, and their et cæteras. In a government that has for its object the greatest happiness of the greatest number, little or no need is there for any such denominations with exclusively appropriated punishments. A public functionary is a *man*: gentlemen do not seem to me to be altogether aware of this: with my respectful compliments, do me the favor, Sir, to convey to them the information of it. A public functionary is a man. Not only is his reputation the reputation, but his person the person, his property the property, of a man. By sedition and so forth, if any real mischief is done by it, it is to the person or the property of some man that the mischief is done. Ill indeed must the public functionary, whoever he is—the Monarch if there be one, ill indeed must he have comported himself, if, on the part of the people at large, there is not, on every oc-

casion, and in all manner of ways, more promptitude to afford protection against injury, in this or any other shape, to him, than to an individual not so distinguished.

In a country, the government of which has for its end in view the greatest happiness of the greatest number, let a man seditious—let a man insurrect—see what he will get by it. He will be laughed at : laughed at, as an untoward lamb might be, if seen running and butting against its mother : he would be laughed at and there would be an end of it. Colonel Burr insurrected : Colonel Burr tried to make himself Emperor of Mexico : Colonel Burr thought to make himself Emperor of the United States : many is the laugh I have had with him about all this—I, who write to you. In the United States, has he had his entrails torn out of his body ? a man in his place would have been so dealt with in England : has he seen them burnt before his face ? No : there he is in New York, subsisting quietly, as other lawyers do, upon the indiscriminate defence of right or wrong, now at the end of his career, just as he did at the commencement of it. Ask Miss Wright, Sir, if it be not so—see what her book (*Views of Society and Manners in America*, by an Englishwoman), translated ere this into French, says of him in one of the notes.

Out of the 639,—*that* being the whole number of the articles in the Code, deduction made of those general ones, 190 in number, which are not occupied in the creation of particular offences, or the appointment of particular punishments,—out of this number of 639, not more than 89 had I run over before I had counted 21 as the number of times in which this same punishment of death had been attached to so many different offences. True it is that, in speaking of penal laws, to speak of the multitude of the laws as a conclusive proof of severity on the part of the whole system,—to speak of *multitude* in this case without notice taken of *extent*,—is, I am fully aware, a mode of speaking no less pregnant with misconception than it is frequent. In the English chaos, for example, where stealing or destruction is the mischief to be obviated, you have one law for one sort of vegetable, another for another : and so throughout : a plan, according to which, the vegetable kingdom would of itself, if all other penal laws were abrogated, furnish matter for between 50,000 and 100,000 of them, and still leave all but a small part of the field of mischievous delinquency uncovered. But in the present instance, the rigor of the punishment will be found not mismatched by the amplitude of its extent.

But the striking and deplorable circumstance, is—to find the highest lot in the scale of punishment attached to so great an extent, to acts, in regard to which, in that system of law which is productive of the happiest effects, it is after such a length of experience universally understood and acknowledged, that there exists not any demand for punishment in any shape.

As to the taking of these cases, or any of them, one by one, and, by a regular application made of pre-established principles, considering, in the first place, whether the act ought to be placed upon the list of

offences, in the next place, whether death would be an apt punishment for it, and if not what other would be,—no such discussion, Sir, can I, upon the present occasion, think of attempting to trouble you with. In any Code of my drawing, this would be done, and in a manner which in my eyes would be complete, at a much less expense of words than the least that could be bestowed upon it in any work having for its subject a Code by another hand, even supposing the particular arrangements determined by a set of pre-established and declared principles: and not, like the one in question, so completely and even avowedly unprincipled, that a volume might be occupied in the endeavour to reach by conjectures, antecedently to examination, the considerations that, in the character of *reasons*, may have given birth to this or that one article.

On the subject of *religion* indeed, it being the only one which has received any special mention in your letter, I had, at the time when the first of these of mine was sent off, written a few pages, to which I thought of giving insertion in this. But, by a second glance on this part of the proposed Code, observation was insensibly and perhaps unfortunately elicited, in a quantity much too great to be consigned to a letter, in which any other subject were brought to view. Should it ever reach your hands, Sir, it will accordingly be in the form of a 7th letter, written in addition to those announced in the first.

One word more about death: about the grim tyrant, and the once established and, established or not, every where honoured Code, by which the door was shut against him. Seeing the use made by the gentlemen in question of this instrument, hardly should I have expected to find that of these “*most esteemed European Codes*,” the wisdom of which (as p. xii. of their Preliminary Discourse informs us) they had made theirs, this same Tuscan Code had been one: this same Tuscan Code, in which, of this same instrument, no use at all was made. Either my memory deceives me greatly, or, in some authentic statements made at the time, I read, that after the innovation thus introduced,—though any thing like the whole of the benefit which by its leniency the Code was calculated to produce, had not yet had time to manifest itself,—the number of those crimes, to which the punishment of death had been used to be attached, had not received increase. Yet so it is, that not only the Code of the French Constitutional Assembly of 1791, but this same celebrated Tuscan Code, had passed under their review. So in page xv. of their Preliminary Discourse they expressly tell—*us* I was going to say—I beg their pardon, Sir, I should have said tell—*their colleagues*.

P.S. Before this letter goes to the post, I have just time to acknowledge the receipt of a 2d letter from you, dated Paris, 26 Sep. 1821.

Though what was said of me by our friend was the pure result of his own generous zeal, and altogether without warrant from me,—the consequence which has resulted from it is—not in the less, but in the greater degree, a source of gratitude in my mind as towards him, as well as satisfaction and pride on my own account: for, never was de-

claration more sincere than mine was, when I spoke of myself as receiving honour as well as pleasure from such a correspondence. Few things could have contributed more strongly to confirm me in that sentiment, than the frankness of your consent, to that publicity, by which, whatsoever service such a correspondence may be capable of rendering to that country which is the object of our common affection, will be so effectually cleared, of the inconveniences with which it would otherwise have been clogged.

At the same time, believe me, Sir, it is not without the sincerest sympathy and unfeigned uneasiness that I can reflect, as I have but too much and too frequent occasion to do, on the invidious and unpleasant situation in which it has been impossible for me to avoid placing you, by the necessarily unwelcome freedom, which I have all along found myself compelled to use in speaking of this production of your illustrious colleagues. For, how can they do otherwise than behold in you the cause of so many strictures, of which, should they be thought to amount to any thing, sensations, of a nature very far from pleasant, cannot but be the result? But, in the opposite case, and in proportion to the importance of any of the suggestions which it has fallen in my way to submit to you, the warmer your love for that country of which you are one of the most conspicuous and brightest ornaments, the more valuable in your account will be the indemnification, which, in the character of a Spanish citizen and a representative of the Spanish nation, you will receive.

LETTER V.

Further grounds for the apprehension that, by the proposed Code, the interest of the subject many is, designedly or undesignedly, sacrificed to that of the ruling few.

STRANGE indeed, unexampled indeed, would the case be, if it were otherwise : but, so far from being a reason for the omitting the mention of any instances in which it is exemplified, the strength of the propensity in human nature to produce such sacrifices, is a reason why the search after them should be the more rigid, and the display of them the more complete.

To attempt to bring to view the several particulars, by the observation of which a suspicion to this effect was produced, would be to attempt to bring to view little less than the whole contents of that same official and preeminently important work. I must content myself with a few samples. But they shall be such as are either all-comprehensive in their extent, or do not want much of being so.

Example 1. *Fundamental principle neglected.* What I have here in view is—the profound silence as to the fundamental principle of the Constitutional Code: as to the two leading articles 4 and 13, into which by far the greatest part of its merit and beneficial influence is condensed:

namely, the so often mentioned principle, by which the *greatest happiness of the greatest number* is laid down in form in the character of the proper end of government, and as the object to the attainment of which the several arrangements of detail included in that same Code, were meant to be understood as having accordingly been directed. The application, which this your troublesome humble servant makes, of this instrument of Spanish construction—you see, Sir, how continual and indefatigable it is: it is a light, by which every step in his career is lighted. Such is the use made of it by an Englishman. The gentlemen in question being Spaniards, how comes it that, all the time that they have been at their work, this matchless Spanish instrument has been lying in its case? how comes it, that these articles, to which, from first to last, reference express or tacit could not consistently with consistency have been omitted, remains from first to last a dead letter in their hands?

These same articles of this Code,—for what purpose were they put there? Was it only for show? The authors of that same Code—was it not their intention the principle should be made use of? The articles—were they placed there in no other character than that of so many flowers of rhetoric?

But, the authors of this proposed penal Code, it is with them that our concern is at present. Of the neglect in which they have left this light of lights, what can have been the cause? Sir, can it have been any other than this; namely, that it did not suit their purposes? From what follows, your judgement on this point may perhaps require some assistance.

Example 2. *Rationale rejected.* What is above leads me immediately to the matter of the *rationale*.

Of my plan, the rationale is an *essential*, I should rather say *the characteristic*, feature. But what does it consist in? In neither more nor less than the undiscontinued application of the abovementioned fundamental principle: an application of this basis of your constitution to every the minutest line in the several arrangements, by the making of which, the operations of the legislator are carried on. In the very act of proposing this accompaniment, a sort of challenge to all legislative draughtsmen was contained. From the challenge thus given, the gentlemen in question shrunk. Why, Sir, did they shrink from it? To their constituents, as I have shown, to the subject-citizen as such, it would have been at once a source of *interpretation*—a fund of *instruction*, *moral* as well as *political*—a source of *security*, satisfaction and comfort: a source of security against arbitrary rule in the hands of the *legislator*, and against arbitrary interpretation in the mouth of the *judge*: to the judge, a continual *guide*, but at the same time as continual a *bridle*: to the body of the law, in the whole and every part of it, an *anchor*, giving stability, just so far, and no further, as reason, assisted by experience, shall have shown that stability will be conducive to the all-comprehensive and all-commanding end so often mentioned. This being among the undeniable properties of the instrument in question, why, Sir, I ask once more, did gentle-

men shrink from it when offered to their hands? Sir, I will tell you plainly. They had two *reasons*, for turning their backs upon an instrument, the matter of which is composed of *reasons* in another sense. In it they saw a *guide*, but a guide whose course it did not on every occasion suit them to pursue. In it they saw a guide, but in it they at the same time felt a *bridle*: and all this in both their capacities, that of legislative draughtsmen, and that of sanctionative legislators. To which may perhaps be added, that, not impossibly in their view of the matter, to construct, and make undiscontinued application of, an instrument of this nature, was not quite so easy as to propose it.

In that paper of mine, the heads of which I have had occasion to submit to you in the first of these my letters, the two last heads are S. 10. "*On the part of any proposed draughtsman, willingness or unwillingness to interweave in his draught, a rationale as above, is the most conclusive test, and that an indispensable one, of appropriate aptitude in relation to it* ; S. 11. *On the part of a ruler, willingness or unwillingness to see established an all-comprehensive Code, with its rationale, as above, is among the most conclusive tests of appropriate aptitude with reference to such his situation.*" Among the most conclusive, I said: speaking of a ruler, in whatever rank and in whatever department: and, when speaking of a ruler in the rank of supreme legislator, or in that of possessor of a share in that all-commanding power, might I not have said absolutely *the* most conclusive?

Sir, the time, at which these propositions with the demonstration of them was penned, was by a long time anterior to that in which, by your favour, the proposed Code with the preliminary discourse prefixed to it came into my hands. To my mind, no otherwise were the authors of that work present, than all other men, by whom that same or the like pre-eminent situation shall have been filled, were, are, and will be present. But, if and so far as that which of all men without exception in their situation is there said, is true,—of them in particular it is true: nor can it, consistently either with sincerity, or consistency, be retracted.

In that work of mine, in which, of the sort of instrument in question, with its use, a description more or less particular is given—in that work, the existence of which was assuredly no secret to any member of the Spanish Cortes, nor to any of the gentlemen in question in particular—in that work is even contained a sample of the application made of this same instrument:—a sample of the mode of applying it, and of the sort of work produced by it. To judge from a paragraph in their preliminary discourse, it looks as if somebody or other had even been troublesome enough to endeavour to draw their attention to this same part of that same work:—and "*What say you to this? will not you give us something of this sort in your Code?*"—One would think these or some such questions had been put to them: put to them, and in so troublesome a way, that, to this matter, in that same preliminary discourse, something, by way of excuse for their silence on the

subject, was thought necessary: at any rate, that on this subject something should be said. Be this as it may, in that same page of theirs, on this same subject, something actually is said.

What is it? Sir, it is what I am truly glad to see. For, (as you have seen already, in the way of *allusion* at least, statement being referred to in another paper,) as in this way, in my dull logic, you have seen reasons *for* the use of reasons,—so here, in their brilliant rhetoric, we have gentlemen's reasons *against* the use of reasons.

First comes their all-comprehensive determination—their determination, respecting all such parts taken together as come within the field of their labours: then come exceptions, six in number: exceptions, speaking of six points in particular, in relation to which, thus as it were in a parenthesis, such reasons, as it has seemed good to them to submit to your consideration, follow.

With regard to the *tout ensemble*, their determination being—not to give any reasons bearing separately upon the several arrangements, or any of them, with the exception of the six just mentioned,—in the place of the excluded reasons, they give you one reason—one reason, which in their view is a conclusive one—for not giving them. This reason, what is it? Ah! Sir, disallow it if you can. Disallow it, if you can find it in your heart to be so ungenerous. Sir, in the all-sufficiency of that unerring test of right and wrong, which you all, Sir, have the self-satisfaction of bearing in your own breast—it is in that security that they find a succedaneum, to every thing, which, on any occasion, it would be in *their* power to find in the shape of a reason: a succedaneum so fully adequate—a substitute so much better than merely adequate, that any thing in that way on their part would be worse than useless. To the conclusiveness of this antirational reason, what objection can you oppose? Sincerity will suffice to prevent your disputing it in your own instance; politeness, in that of any of your colleagues.

After an observation, respecting the matter of the *Title* termed by them the Preliminary Title,—namely that, giving as they do the whole of it, they do not give any part of it over again, regarding as they do any such repetition as useless,—“because,” say they, “we regard every such addition as useless” (a conception, in which no man can, I think, refuse concurring with them) after so saying, they go on in “page xiii. and say, “As little will the Committee—as little will it give “any exposition of the reasons (*raziones*) on which it has grounded the “several articles respectively, for that *they* (meaning doubtless the reasons in question) cannot have kept themselves hidden from the superior perspicacity (*ilustracion*) of the Congress:” (meaning the Cortes, into the ears of which, in full assembly, the stream of this eloquence, I take for granted, was pouring itself forth.)

By this *ilustracion*, a term for which, in the sense in which it seems here to be employed, I find not, in my own language, any exact equivalent—for *illustration* will not serve—by this one endowment, that which gentlemen appear evidently enough to have in view, is—the pair

of contiguous organs, to which I had occasion to make allusion in the second of these letters: namely, the same to which Dr. Spurzheim would, after a sufficient inspection, give the denomination of the organs of *impeccability* and *infallibility*: organs, which, without need of any such assistance as that of the ingenious anatomist, all rulers in chief, except of late years those of the Anglo-American United States, have so universally felt upon their own foreheads; and of the extraordinary prominence of which, in their own instance, the authors of your Constitutional Code, so well followed up by these successors of theirs, have given such extraordinarily prominent demonstrations.

Now, Sir, as to these same colleagues of yours, the matter must be left to themselves. But as to yourself, Sir, pardon me, if so it really be that you are a sharer with them in the good fortune of being in possession of these same organs, or either of them, it is plainly more than you yourself know of: you might as well not have had any such things. Of the possession of any such useful implements had it happened to you to be conscious, never could I have received any such letter, as that, by the receipt of which, your humble servant received that honour, of his gratitude for which you see the fruits. In the course of the contest for your favour, here, Sir, you have two compliments to choose out of: which of them is most in accordance with truth? which of them is most in accordance with your taste?

For the reason above mentioned, to their colleagues, say the gentlemen in question—to all these representatives of the Spanish nation without exception—any such implement as that same *rationale* would have been useless. Well, for the moment, and for the purpose of the argument, be it so. But these same distinguished citizens, whom, to the number of from 150 to 200, they are thus addressing—in the whole Spanish nation, were they the only individuals, by whom either the faculty called *reason*, or the faculty called *sensibility*, were possessed? The privileged organs in question, by which governors have hitherto regarded themselves as distinguished, are they in your country in the possession of the governed likewise? If so, what need can there be of governors? And here, alas! comes one of the proofs of the position which gives title to this letter:—namely, that, in and by the official work in question, the interest of the subject many is, designedly or undesignedly, sacrificed throughout to the interest of the ruling few. Look, Sir, to the excluded foreigner: look to these your select, your native legislators:—the whole body of their fellow-countrymen, their security, their satisfaction, their instruction—which of all these objects has ever been forgotten by the foreigner? which of all of them was remembered by these their representatives in this effusion of their eloquence? But their colleagues, for whose ears the compliment had been composed—these colleagues were present objects; constituents, all of them distant ones—all of them distant from their thoughts:—by the interest of the select and present and associated *few*, the whole field of their vision was pre-occupied; the interest of *all* was, in their eyes, too minute an object to be a perceptible one.

Six, however, though no greater than six, is the number of those points, to which, in the opinions of these your selected colleagues, your all-sufficiency, Sir, (*yours* is of course here plural,) did not, at that time, extend. Accordingly, in relation to these several points, they proceed, or at least profess, to lay before you their reasons. Why? because these were the points, in relation to which, amongst certain persons not named or indicated, the most considerable controversy had had place. In this controversy it is that they find the source of an obligation, by which they feel themselves called upon to be thus particular: "*solo secrete e obligada á indicarlos motivos que en algunos puntos muy contravertidos la inclinar ou á la opinion que ha abrazado.*" p. xiii.

The points are in brief as follow:

1. Drunkenness.—Shall it in any case have the effect of warranting any mitigation of the punishment? Answer: No.
2. Transportation.—Shall it be employed as a punishment? Answer: At present, no: in the contingent future, yes.
3. Stigmatization.—Shall it be employed as an ingredient in any lot of punishment? Answer: Yes; but in no other case than that of condemnation to hard labour for life.
4. Asylum.—On the ground of its connexion with religious worship, shall any place continue to possess the property of affording impunity to delinquents? Answer: No. This unanimous.
5. Pardon.—Power of pardoning, shall it be continued to the Monarch? Answer: Yes; but subject to certain restrictions. Allusion is made to them, but no reference in figures.
6. Judicatories of exception.—Shall there be any? Answer: Two only; namely, military and ecclesiastical. Military, for military offences; ecclesiastical, for ecclesiastical.

Now then comes a question. All-sufficient with regard to all other points in the legislative compass, how comes it that gentlemen's organs fail them when applied to this half-dozen? Compared to what is left untouched, these are but as so many drops, in that ocean, to which, as above, they have given the character of *the Pacific*. And so, in the conception of these gentlemen, only in so far as controversy has had place, can there be any demand for reason! Sir, among the points touched upon in my Code, whatever may be the number of those to which it has happened to have produced controversy, the number of those to which no such accident has happened, I should expect to find still greater. Is it only as an instrument of victory, Sir, that reason is of any use?

On the above points of exception, to say any thing more would be wandering from the announced purpose of this letter. One alone, namely, *Judicatories of exception*, upon looking into the article on this subject in the proposed Code, presented matter which seemed not inapplicable here; and with this the present letter will close.

Example 3. *Method antipopular employed*:—method, indicative of disregard to the interests of the subject many. In my own Code, the method pursued was suggested, partly by considerations of a purely lo-

gical nature, partly by considerations of a moral and political nature. Those of a purely logical nature belong not to the present occasion: those of a mixt nature, partly logical, partly moral and political, apply to it: and by a principle of connexion, of which it has not happened to me to see any notice taken elsewhere.

In regard to the order to be given to the several groups of *acts*, converted by prohibition and punishment into *offences*, considerations of a moral and political, concurred with those of a logical nature, in producing the determination that was pursued.

Where, of one of two objects, a perfect conception may be conveyed, without any conception conveyed or entertained of the other, while the converse of this does not hold good,—give the first place to that one, the conception of which is thus independent of that of the other. On the opposite plan, two objects will unavoidably be spoken of at the same time: the one directly and explicitly, the other indirectly, and in the way of allusion: and confusion will thus throw its clouds on the whole texture of the discourse.

To the domain of logic belongs this rule. By it has arithmetic been guided in the order given to the numbers in the numeration table.

Apply this to the matter of a Penal Code. Of offences against individuals—against individuals determinate and assignable—the mischief is intelligible to all: intelligible in all its shapes, upon the bare mention of it; intelligible, without any the least need of reference to offences against this or that particular class of not assignable individuals, or to any of those against the government, or the nation at large: the offences of which two last divisions have for their common character, that the mischief produced by them affects not any one individual or class exclusively, but, if it affects any one, affects the whole. Of offences of the first description, the mischief may be said to be *actual*: in the case of those of the two last descriptions considered as such, it is only in *tendency* that the act is mischievous. In this or that instance, the mischief which is but in tendency may indeed have actual mischief to any amount for its accompaniment: in which case, the author may be dealt with accordingly: but, when it stands clear of any such accompaniment, the demand, whatever it be, for prohibition and punishment, may still remain: of that mischief which is in tendency only, the correspondent actual mischief forms the sole and indispensable basis. From those of which the mischief is but in tendency, suppose it ascertained that no actual mischief can in any shape result, the ground for placing them in the catalogue of punishable offences vanishes.

Note that, to be *actual*, mischief must consist either of pain or loss of pleasure: pain in some determinate and assignable shape, or loss of pleasure in some determinate and assignable shape.

Such being the order prescribed in the first instance by logic, observe now the consequence of it with regard to morals and politics.

At and from the very commencement, of a Code commencing in this way,—every man perceives, at first view, the benefit it has conferred on him, the care which the legislator has taken of his interest—of his

happiness. Let a man but open the Code, by the very first glance he casts upon it, a conception thus satisfactory, how can it fail to be conveyed to him? What man is there, that has not, in some shape or other, a body, a mind, reputation, property, a condition in life? In the prohibition and punishment, attached to acts, by which, through injury done to those several possessions of his, his happiness is liable to be diminished, he sees the protection which, in these several shapes, has been provided for him by the law. In the legislator he beholds a kind guardian, to whom his welfare, in all its shapes, has been an object of all-comprehensive and laborious solicitude.

Instead of offences against individuals, let offences against the government now occupy the first place. Every where but in the Anglo-American United States, religion being seized on and converted into a state-engine, employed in giving support to the power of the rulers,—the care for the support of religion in this character, will, in some way or other, be combined with the care for the support of government.

The protection he now sees afforded, to whom does he see it afforded? To himself? No. But either to an Almighty Being, to whom it cannot be of any use, or to another man or a set of men among whom he is not included. Here then you see, Sir, the advantages that have just been brought to view vanish.

Returning now to the former case,—suppose the legislator, by what considerations soever induced, whether by the above logical rule, or by the political consideration—regard for the greatest happiness of the greatest number—suppose him to have, in his Penal Code, begun with giving the first place to the class of offences against individuals. This point settled, suppose him to have taken up the subject of offences against government. The government in question is (suppose) a monarchy: chief functionary, the monarch. What follows? Seeing in this man neither more nor less than a man, he would, perhaps, as in the Anglo-American United States, have regarded the security of this man as being sufficiently provided for, when provided for in exactly the same way as that of all other men: if not, he would at any rate have inquired, whether in this case any difference should be made: and if yes, what, and on which side, and on what account: and so on, in regard to all classes of persons, functionaries or not, by whom, or in whose behalf, he found *privilege* in any shape enjoyed.

Unfortunately, in those same Codes of greatest credit and “reputation in Europe,” (p. xii.) drawn as they have all been by men, employed by a supremely ruling one, and themselves belonging to the class of the ruling few;—and of course careless to what degree they made sacrifice of the interests of the subject many, to the interests, real or supposed, of the said ruling few and supremely ruling one;—in these exclusively consulted Codes no such simple and natural order of insertion has been observed. How should it have been? No such order would have suited the purposes the ordainers of them had in view.

In my view of the matter, title to regard is determined, and degree of regard measured, by the numeration table: *two* have title to twice as

much regard as *one*: *three*, to thrice as much; and so on. Accordingly, in my Penal Code, my first care being to make provision in the most immediate way for the security of *all*,—thus it is that, no objection to this plan of arrangement presenting itself, nor any special use as derivable from any different one, it is by the cluster of arrangements employed in the establishment of *this* security, that the first place in that same Code is occupied. And thus, by this political consideration, has the order originally suggested by the logical consideration, in my view of the matter, been confirmed.

Not so, in the view taken of the matter by the bespeakers, nor consequently by the makers, of those same supremely accredited Codes. In their view of the matter, title to regard is determined and measured by DIGNITY: a sort of phantasm, created by Power, in the imagination of Imbecility, for its own use.

Shaping their practice to this theory,—in the ruling one—in the monarch, who is upon earth—they have seen the vicegerent and express image of the person of him who is in heaven: in him they have seen the one for whose use all others were created; in the subject many, those who were created for his use. In him they have seen all excellence; in them all depravity: between the one and the other they have seen an intermediate class, composed of individuals, whose respective places, in the scale of excellence, moral and political, are in correspondence with their places in the conjunct scales of power, opulence, and factitious dignity:—endowments, derived all of them from the grace and pleasure of the ruling one.

Of this theory, an immediate practical consequence, always more or less acted upon, and sometimes even avowed, is—that in the instance of every person to whom the protection is afforded, the punishment, employed in the affording it, ought to be high, in proportion to the height of the level, occupied by him, as above, in that same conjunct scale. Looking then, in the first place, to the heavenly monarch,—in his instance, taking for his opulence, that which it has pleased him to make over to his professional servants, they behold power and dignity infinite. Looking in the next place to his earthly representative, they behold power, opulence, and dignity next to his. In both cases, the practical consequence follows as of course. As, for the protection of the mind, the reputation, and the peculiar property of the heavenly monarch,—so for the protection of the body, and condition in life, as well as of the mind, reputation, and property, of his earthly representative,—no punishment can be too afflictive.

By the purely logical consideration, if I remember right, was the order of consideration and expression here in question suggested to me:—by the clearness, which, not only in this but in all other cases, is the result of that course of consideration, in which things connected with one another are taken, as far as may be, one at a time. Ample at same time was the confirmation, which, in the present case, the logical rule was found to receive, from those considerations, of a moral and political nature, which belong, in a peculiar if not exclusive manner,

to this same case. Intimate accordingly, in this case, is the connexion between the logical and the political considerations.

By the *logical* rule it stood ordained, that, in the arrangements by which protection and security were in the way in question afforded, all men without exception should come in in the first place, before any place was assigned to any such arrangements, as those by which additional protection and security came to be afforded, to men standing in this or that particular situation.

But, thereupon comes the *political* consideration :—in so far as distinction and opposition between interest and interest has place, by whom is presented the best title to regard at the hands of the impartial legislator? by whom is presented the title to a preference? by the *few* as such? or by the *many* as such? The question once put, the answer could not be dubious: the question itself presented it. To me it was presented between 50 and 60 years ago, by I know not what little pamphlet of Dr. Priestley's: by your Cortes (A. D. 1812) it was adopted, and in articles 4 and 13 of your Constitutional Code, it stands established. And thus it is, that not only for order of consideration and discourse, but for title to regard and degree of regard, you have at once a standard and an example in the *numeration table*. A plainer, a more universally known, a more familiar, a more universally understood, a more indisputable, standard—can it be desired?

Judging of every thing by this standard, I saw that, if, to any one more than another, power in any shape were given to be exercised over the rest, it could not, consistently with this standard principle, be given to him in any other character than that of Agent, and Trustee, and in that shape Servant, to the rest. Hence, for as much as, in respect of money, power, or factitious dignity, nothing could by any legislator be done, for or in relation to those same servants of the people, but at the expense of their principals,—hence, in my view of the matter, judging by that standard, for these same servants, so long as the interest of their principals was equally well provided for, too little could not be done. Not so in the view taken of the matter by the gentlemen in question:—not so in the view taken of the matter in any of those most “*accredited Codes of civilized Europe*,” from the virtue and wisdom of which, a portion more or less considerable of theirs had been imbibed. No, Sir: on that subject—as every body knows and feels—on that subject, every where but in the Anglo-American United States, the universal and all-ruling notion, is—that for these same *servants* it is not possible to do too much: and accordingly, the first thing that is done—every where done—for them, is—to declare them *masters*. Masters? Yes, and in such sort masters, that the character in which their natural masters, thus converted into servants, ought to be considered, is—that of so many animals of an inferior nature, created by an all-benevolent and all-wise being, for the use of these same self-constituted masters: their masters; or, as the more polished language of English aristocracy sometimes phrases it, their *bettors*.

Such then are the beings, who, in the first place, together with

whatever belongs to them, are to be taken into account, spoken of, and provided for.

In the first place are stationed their peculiar endowments—the power, the wealth, the factitious dignity, with which they are invested : the peculiar endowments, together with the peculiar protection employed in affording a peculiar degree of security to the possessors of these same endowments : the peculiar protection and security, and thence the peculiar punishments, by the terror of which, all hands that might otherwise be tempted to make any motion, by which the enjoyment derived from these endowments might be lessened, are to be arrested.

Under the late non-constitutional monarchy, the object of the first care, not to say the only care, was the providing this security for the monarch and his particular connexions.

Under the existing constitutional monarchy, the objects of gentlemen's first care, is—the power of that illustrious class of citizens, of whom they themselves constitute so distinguished a part : the care taken of this object is, in their language, the care taken for “ *the liberty of the nation.*” Their next care is, for the power and person of the monarch, who, from the condition of absolute, has by a precedent care been removed into the situation of constitutional, king.

Correspondent, in the eyes of the bespeakers and framers of the most accredited Codes of cultivated Europe, and consequently in the eyes of the authors of this which is so soon to be numbered among those same accredited Codes,—correspondent to the excellence of the illustrious masters, is the depravity of those inferiors, who, in the character of servants, are placed under their rule : inbred is the refractoriness of those unworthy servants ; wilful and perverse the blindness, by which that excellence is concealed from their perception : insolent, obstinate and incessant, the efforts they ever have been and ever will be in the habit of making, in the flagitious endeavour to withdraw their necks from under the too well deserved and altogether necessary yoke. For stopping a propensity thus perverse, what chance can be afforded, by any image less appalling than that of the dance of death, perpetually staring them in the face ?

Full of these ideas, sword and ax in hand, gentlemen fall to work accordingly. They begin with killing all those, who, in any view, and in particular in the view of reinstating the king in the defalcated portion of his power, have the audacity to meditate any diminution of *theirs*, to make any “ *alteration,*” in any of all those things that have been done in their favour.

When these are dispatched, the next set to be disposed of, are—all those by whom any thing has been done, to the prejudice of the sovereign partnership concern, against the person or authority of the original parties, whose names stand at present but second in the firm. Death, on the one hand, for all those, by whom, towards the restoration of the old authority, any thing shall be attempted or conspired to be attempted, in diminution of the new : death, on the other hand, for all those, by whom, for the augmentation of the new authority, or any other

purpose, any thing shall be attempted or conspired to be attempted, in further diminution of the old.

When, under chapter first of this title, one half of the people whose greatest happiness is gentlemen's object, are disposed of, and under chapter 2 the other half, what will be the number left alive?—For the solution of this question, no very deep skill in arithmetic seems necessary.

For all this riddance, though, if life be worth any thing, nothing surely can afford a *justification*, the wisdom of the most accredited Codes of cultivated Europe, at any rate,—leaving out of the case the most celebrated of any of them—the Tuscan,—affords, it must be confessed, but too natural a *cause*; and, not only but too natural a *cause*, but, in so far as, on the part of those, in whose hands the care of the happiness of millions is intrusted, blind imitation affords an excuse, but too good an *excuse*.

True it is, that, for giving security in its several shapes to the whole number of those of whom the community is composed, appointment must be made, of some men in particular, to whom, in various capacities and ranks, this occupation shall, in a more especial manner, be assigned: not less true is it, that nothing could be more palpably absurd and mischievous than such a denial, if to those by whom security is thus afforded to others, that security which is necessary for themselves should, in any shape or in any degree, be denied. But even supposing, what is more easily supposed than proved, that, in the instance of these Trustees, any additional security, over and above what is given to them as principals, is necessary, still it will remain to be shown by any one who thinks he can show it, what use then can be in setting this ultra-security to stand first.

How naturally and frequently does the mischief aimed at by injustice recoil upon itself! how natural and frequent an effect of the *too much* is the *too little*!

When it is in no other character than that of a member of the community, that a public functionary applies for protection against injury,—all affections, all hearts, and all hands, are on his side: when it is in a distinct and privileged character, *many* hands, as well as *many* more hearts, will pretty certainly be against him. Well would it be for the country, whatever it be, if on this occasion instead of *many* one might say *all*. This however is unhappily not the case: since, be the distinction ever so absurd and mischievous, and in consequence of it the conduct of the functionary in question ever so unwarrantable, so it is that, in every country, by the laws of which, such distinctions are made, community of sinister interests will have secured to him partisans and supporters in vast multitudes, and interest-begotten prejudices—the prejudices begotten by that same sinister interest—perhaps still more.

So much for theory. Look now, Sir, to experience.

In the Anglo-American United States, no instrument of *ultra security* has place. None whatever. And what is the consequence? that the security enjoyed by the functionaries in question—that the security enjoyed by the community of which they are functionaries—

is the less entire? No: but that it is much more so. Take for example the chief. For injury done or intended in any shape to the president of the United States, no greater or other is the punishment provided, than for the like injury, to the man, if there be a man, who blacks his shoes. What is the consequence? is he the less safe? Not to speak of Asia, exists there in all Europe, a monarch by whom any thing like equal security is enjoyed? Oh, no: nor ever will or can there be. The monarch is a mark for every madman to shoot at: and not only for every madman, but for every man who, in his own eyes, has reason to regard himself as suffering injury at the hands of the uncontrouled arbiter of his fate. And to what place can the monarch betake himself, without being encompassed by multitudes, to whose minds, notions to that effect may, for aught he can tell, be incessantly present?

Vainly would any one say—Ours is a Monarchy, and in a Monarchy these distinctions, together with a thousand others in the same strain, are indispensably necessary. This necessity, so lightly assumed, how comes it to be known to you? What ground have you assigned, what ground can you assign, for it? Absolutely none:—what experience there is, is all against you: experience for you there is none.

Suppose it were even as you say, what would it prove? only that monarchy is no fit form of government: and that this part of your constitution stands in need of alteration: and certainly not the less for the slaughter which gentlemen have been employing in their endeavours to prevent it. Were they aware—were they not aware—of the importance of the limitation, when, to the field of that legislative wisdom to which theirs disdained not to have regard, they assigned the limits which *Europe* has for its bounds? Be this as it may, had *America*—free and liberalized *America*—been within their view, and taken for their model,—Sir, you see the consequence. Taking *Europe* for their model, they violated the Spanish Constitution in its most essential and fundamental articles: they took for their end in view, how erroneous soever may have been their conception of it, the greatest happiness of the ruling few:—of that class of which they themselves are such distinguished ornaments: had they taken for their guide those essential articles of their own Constitution, they would have taken for their end in view the greatest happiness of the greatest number, and no such articles, as those with which these two chapters of their Code are filled, would have been found in it.

Sir, it was their own doing—it was their own spontaneous doing—the heaping up all this pile of so much worse than useless punishments. By no article in the Constitutional Code were they compelled to it. By the Code, the *powers* were indeed created and conferred: but as to the *punishments*, if any, which should be employed in the endeavour to give effect to those powers,—on this head nothing can I discover but a blank.

Nor, because accordant with and confirmed by a principle of a democratical character, is there any thing in this plan of arrangement—of this order of insertion—that should prevent it from being pursued

in a monarchy: in a monarchy, limited or even absolute: in a word, under any other form of government. For some time to come, it is not by every nation, that so much as the *desire* of living under a democratical government will be entertained: and of those by which it is entertained, it is not by every one that the *faculty*, of giving to any such desire its gratification, will be possessed. But, to no government—democratical, limitedly monarchical, or unlimitedly monarchical—to no government, however extensively and constantly determined in its conduct by regard for the separate and sinister interest of the ruling few and the supremely ruling one, to no government can it naturally be a discordant and unacceptable spectacle, to see the rule of action—at any rate *this* part of it—not only intelligible to all, but satisfactory to all: in no government can it be otherwise than satisfactory to its rulers to see their own personal security standing on its steadiest and surest basis.

Order of insertion is one thing: classification and nomenclature—(for they are scarcely separable) classification and nomenclature, by natural philosophers commonly comprehended under one name *method*, with or without regard to order of precedence, another. Of a *rationale*, formed by the undiscontinued application of the so often mentioned fundamental principle of your constitution, a correspondent method of classification and nomenclature, is a natural, not to say an inseparable, accompaniment and instrument. But, to the gentlemen in question, even without, still more with, this accompaniment, a *rationale* would have been a bridle: and, as I have so often had occasion to say, gentlemen did not want a bridle: no man in their situation does. *Natural* and *rational* are attributes, by which, with incontestable, and even with exclusive propriety, a method thus deduced and accompanied, may assuredly stand designated. This natural and rational method—apply it to the penal code, you will in so doing have gone the greatest part of the way, towards the applying it to the two others. According to the abovementioned fundamental principle, *offences* is the name given in common to all acts, which, being regarded as productive of a balance on the side of mischief, are taken for the subjects of prohibition and thence of punishment. Mischief is, by the amount of it, a defalcation made from the greatest happiness of the greatest number: and to be real, it must, as above noticed, consist exclusively either of pain in some determinate shape, or of loss of pleasure in some determinate shape: and in both its forms, or else it will not be prevented in *act*, it must, as above, throughout the whole of the field be opposed while as yet but in *tendency*: opposed, and to a considerable extent by means of punishment.

According to this principle, offences there can be none, but what are offences against individuals:—acts which, in act or in tendency, are productive of mischief, in this or that determinate shape, to individuals: to individuals—meaning rational beings: to which, if it be agreeable to you to add to a certain extent irrational ones, I would with pleasure, so they be sensitive ones, join with you, (as we have begun to do in England,) were it only for the sake of rational ones. To these, I am perfectly

ready to add the Almighty Being, the very instant you have shown me that he is susceptible of pain or loss of pleasure through human agency, and at the same time unable to afford sufficient protection and security to himself. So likewise, but always under the same condition, to fictitious entities: such as *religion, order, good order, "political order," "public order,"* or as many other *orders* as gentlemen please: in short, (but always under the same condition,) to fictitious entities, of any other sort, and in any number, that they please.

In act, or, in a distinctly perceptible and assignable way in tendency, every act, if fit to be, by means of punishment, erected into an *offence*, and thus placed upon the list of punishable offences, must, according to the above principle, be an offence against an individual or individuals:—an act productive of mischief, as above, to an individual or individuals. But, at the time of committing the act, these individuals may either be assignable or unassignable: when unassignable, they may be either comprised or not within a class less extensive than the class composed of the whole community—for instance, a class constituted by professional occupation, or a class constituted by vicinity of residence. And thus you have the three first and all-comprehensive divisions of offences: namely, I. Private offences—offences, the mischief of which applies to assignable individuals: II. Semi-public offences—offences, the mischief of which is in its range confined to such unassignable individuals as are comprehended within a particular class. III. Public offences—offences, the mischief of which extends in tendency to all the individuals, to all without exception or limitation, of whom the whole community is composed. (Note, that in an offence of a semipublic or public character, a private offence will frequently be included.)

Looking now to offences against individuals, you will find them distinguishable into offences against *person*, offences against *reputation*, offences against *property*, and offences against *condition in life*: and if, to any individual, mischief be done in any shape, you will, I believe Sir, find it comprehensible under one or other of those divisions. Offences against *person*, you will find a convenience in distinguishing into offences injurious to *body*, and offences injurious to *mind*: not that *body* and *mind* are ever seen walking—the one one way, the other the other;—nor that pain or loss of pleasure can affect the body without affecting the mind;—but that in some cases the mischief will have its seat in the body, only from thence affecting the mind; while in others it will have its seat only in the mind. Looking to offences against reputation, you will (I must confess) see in reputation nothing more than a fictitious entity. But the adoption of it was found necessary, for the giving an intelligible and familiar appellation to a class of mischievous acts, which could not otherwise have been distinctly designated: and as this reputation is the reputation of a man, and a man is a real entity, you are not by this denomination put in danger of being sent in chase of clouds or shadows, as in those other cases: and, though of the mischief done to a man's reputa-

tion, the seat cannot be elsewhere than either in his body or his mind, nor commonly very distinctly perceptible elsewhere than in his mind,—yet, for the reason just mentioned, you will, I believe, find a convenience in distinguishing it from all other offences, the mischief of which has its seat in the mind.

Looking at offences against *property*,—in property, if all the shapes into which it has been commonly cast are to be comprized, you will see objects, for the declaration or conception of which, you will not find it possible to speak, or even think, without making use of the fictitious entities, which, on this occasion, in such abundant variety, the authors of language have been under the necessity of creating for the purposes of discourse: you will see—not only real entities—things styled *immoveable*, relatively immoveable portions of our ever-moving planet—and those other real entities styled things *moveable*,—but the fictitious entities styled services, and rights of way, and rents, and tolls, and annuities and so forth, without end. But still, by no such fictitious entities, Sir, will you be put in any danger of being led away, from the consideration of the real and only really existing mischief—pain or loss of pleasure, of body or mind, or both—the only really existing mischief, that can be occasioned, or be in a way to be occasioned, to one or more of the really existing and human beings, whose good fortune it is to have you for their representative; and who, in a shape so honourable to you, have a sort of *property* in your *services*, in the very best shape it is in your power to render them.

Looking to offences against *condition*, you will find the like necessity, and thence the like justification, for the nominal existence given to *this* fictitious entity: for, though to a man's condition in life you will find that no mischief can be done, by any act, any otherwise than through the medium of his property, or in some shape or other of his reputation, or of both, (for of the shapes in which *property* has place, property in human *service*, dependent in many instances in no small degree on reputation, is one),—nor then, without producing pain or loss of pleasure to body or mind, or both,—yet here, as before, you will find, in but too great abundance, acts, the effects of which, may with truth be said to be mischievous to a man in respect of his *condition in life*, but which, at the same time, having or not having their seat in the mind, could not be said to be mischievous to him in respect of *property* in any particular shape, or in respect of *reputation* alone: though perhaps they are so at the same time in respect of reputation, and in respect of property in a variety of shapes: the case being, that, on account of some peculiarities in the nature of the mischief, or in the manner in which it is produced, it requires to be distinguished by a separate denomination from the aggregate stock of the offences comprehended in the before-mentioned denominations.

Take for examples, *conditions genealogical*, such as the pair of correlative conditions belonging to *husband* and *wife*; together with the several others which, springing out of them, constitute the genealogical tree. Add those other conditions, which, without being genea-

logical, may be styled *domestic*, such as those of *master* and *servant*: add again those other conditions, which, like the former, are not political, and are still of a private nature, but are not necessarily correlative: I mean those composed of *occupations* of all sorts, other than those of *public functionaries* considered as such: add lastly, conditions *political*, all of them corresponding to, and constituted by, so many modes of *servantship*, as towards the community at large, considered in the character of *master*: of these last, the whole aggregate may be divided into *public* and *semi-public*, as in the case of *offences*.

In all these several cases, the chief value of the condition, in respect of benefit, and in respect of burthen, will be composed of *services*: in so far as the rendering of the services is *obligatory*, the possession of the condition will involve a *right* to the services in question: a sort of *property*, of which those services are the subject-matter: in this case, for example, are the *correlative* conditions above mentioned: in so far as the rendering of the *services* to which the occupation own its value is *not* obligatory, the value of it consists mostly of a sort of *chance* for obtaining free services, in exchange for other free services: in this case are the various occupations exercised by workmen and traders of all classes.

In this process, Sir, if your patience has been persevering enough to carry you through with it, you have seen *logic* employed in *classification*, and thereby in *theory*: in payment for this labour, you will now, I hope, have the satisfaction of seeing some good effects producible from it in practice.

In so far as, in a system of penal law, the denominations thus employed, afford, as above, indication of the nature of the mischief, in consideration of which, the acts in question have been placed upon the list of punishable offences;—of the nature of the mischief, and consequently of the existence of mischief in that shape,—in so far as this indication is afforded, every denomination, by which no such indication is afforded, will *mismatch* with them, and, on the part of the acts which it denominates, present a sort of presumptive proof, of want of title to be admitted into the company of the rest. In such a method, every such instructive denomination stands therefore as a sort of security against the admission of any group of acts, in which no determinately mischievous character can be found.

Take away the security, give admittance to acts, by the denominations of which, no such indication is afforded,—put aside the only natural and rational method,—then comes in as above—then comes in, as of course—some unnatural, irrational, and arbitrary one. Then come in, at every turn,—as sinister interest, or interest-begotten prejudice dictates,—acts which, not being productive of mischief to any *such* amount, that the mischief of the least punishment, by which any diminution could be produced in it, would not be still greater,—or even not being productive of mischief to any amount at all,—afford no sufficient warrant for the application of punishment. For the designation of these same innoxious acts,—since, by the supposition, no apt word, expressive of

chief in any shape, as being produced by them is to be found,—the words employed are such as are designative of this or that vague generality to which every man feels himself at liberty to attach whatever interpretation best suits his views : every man, and in particular every man who has it in his power, to give to his own interpretation the desired effect. Of these convenient generalities, Sir, would you see an example ? Examples more than one—examples sufficient for illustration—may be seen in the system of classification and designation employed by the Committee. Witness Title I. Offences against *political order* : Title III. Offences against *public order* : Title VII. Offences against *buonas costumbres*, which, I presume, is a translation given to the Latin phrase *bonos mores* ; and which, I infer from the use thus made of it, is in Spain become familiar to unlearned ears. In English, *good customs*—the literal translation of the Spanish words taken in their separate sense, would not serve :—offences against *good customs*—would not pass : still less would *good manners*—another of the literal translations of the two Latin words : In a boarding school, yes : but, in a penal Code, offences against *good manners* would not pass. To an English ear, by neither of these phrases would a sufficiently plausible pretence be afforded for *penal visitation* :—to use a recently invented, religiously and hypocritically cruel, rhetorical phrase.

Accordingly, when, for the affording, by political power, a gratification to this or that personal or individual antipathy, a formulary is wanted, the Latin phrase—*bonos mores*, by which the obnoxious act is enveloped in a cloud of convenient mystery,—offers a formulary, the suitableness of which has been proved by experience.

As to the phrase *offences against good customs*, it carries upon the face of it an objection against itself. Because A and B chose to do a thing, why lay hold on C who does not choose to do it, and punish him for not doing it ? And so in case of omission or forbearance. What ground can the mere exercise of liberty by one man, or any number of men, afford, for imposing obligation on any other ?

Of this, and of every other objection, but that of meaning nothing, and thence any thing,—any thing which it may suit the purpose of tyranny to make it mean, the word *order* stands altogether clear. Allow to the legislator the unlimited use and application of but this one word, nothing more is wanted to fit him out in the completest manner in the character of a despot, and that despot a tyrannical one. The acts which draw down upon innocent men the vengeance of the most atrocious tyrants upon record, can there have been any one of them that was not an offence against *order* ? against the *order*, established by the tyrant by whom the man was punished for them ? Tiberius, Nero, Domitian, Commodus, Caracalla, Charles the 9th of France, Lewis the 14th of France, Philip the Second of your own country and Belgium—Philip the Second, not to come down any lower—in the word *order*, had not they, for punishing every one of those whom it was their pleasure to punish, as good a warrant, as gentlemen have given themselves by the use made of this word in their Code ?

By the word *good*, when prefixed, as it sometimes is, to the word *order*, intimation of something like a reference to public opinion seems conveyed. But, not even this little softening would gentlemen vouchsafe to apply to the despotism it proclaims.

Let me not, Sir, be misconceived. What I do *not* mean to say is—that among the acts, to which a title is given by them with the word *order* in it, there are not *any* to which it is fit that the character of punishable offences should be given; on the contrary, there are perhaps not many, to which, if it depended upon me, I myself should not give that character. All I mean to say is—that if an act's being an offence against *order* is admitted as a sufficient warrant for placing it on the list of punishable acts, the consequence will be—that, along with acts affording a fit demand for punishment, others that afford no such demand may in any number be slipt into the list with little difficulty.

By a natural and rational method as above described, not only is a *bar* opposed to acts that are *not* mischievous, but so likewise is a *thread* afforded for the investigation and finding out of such as *are*.

In a method, thus formed by the application which, on each occasion, is made, of one and the same simple principle,—in every such method, by the relation which every offence bears to every other and to the whole catalogue of offences, you are no less naturally led to the discovery of undue omissions, than to that of undue insertions. In a catalogue of offences, in the formation of which no such instrument of indication has been employed, there may be gaps to any amount unfilled: to any extent, modification, of maleficence, to which no penal bar has been opposed: deficiencies ever so numerous and so extensive, and yet no indication of them afforded.

And as it is in regard to offences themselves, so is it in regard to other extensive objects, for the application of which a demand is created by the catalogue of offences. Witness causes of satisfaction for injury, causes of justification, aggravation, extenuation: causes for pardon, total and partial, formal and virtual.

Thus, not only in a direct way, by the application made of it to each particular case, but in an additional way by means of the method to which it gives birth, does the principle of the greatest happiness of the greatest number, cover the whole field of legislation with its salutary influence. By a method deduced from this principle, a bar is in every part opposed to the introduction of arbitrary arrangements in any shape, a thread afforded for the investigation and introduction of suitable ones, and in every part information given of the design pursued throughout the whole, and of the relation which each part bears to every other. By no mode of arrangement, not deduced from that all-vivifying and all-directing principle, can any such satisfaction be afforded. In every part, you see groups of offences, for the insertion of which no reason is visible: in the whole, you see a receptacle, into which, for the purpose of giving to them this disastrous effect, acts of any description—acts the most purely innocent—may with equal propriety, for any thing that appears, be inserted.

No, Sir : without a good *method* for your penal Code, no good penal Code can you have : without a *rationale*, deduced from the fundamental principle of your Constitutional Code—greatest happiness of greatest number,—no good method can you have.

Gentlemen saw before them a method, of which the principle of the greatest happiness of the greatest number—the polar star of your and their Constitutional Code—was the object of actual and perpetual observation. Why would not they employ it ? The answer is obvious, and but too uncontrovertible ; Because it would not suit their purposes.

4. *Example fourth and last.* All Spaniards put under martial law.

In the Preliminary Discourse, (p. xviii.) “ the jurisdiction of the military courts continues,” they say, “ on their plan, confined to military offences :” that is to say (so they add by way of explanation) “ to infraction and transgression of military discipline and *ordenanza*” in English, *order* or *ordinances*, I cannot absolutely take upon me to say which. For a promise, satisfactory enough this promise. But how is it performed ? Answer. By placing the civil authorities in subordination to the military : and in particular, by making military men, in so far as it shall please them to come into conflict with non-military men, judges in their own cause.

There, Sir, you see the position. Now for proof.

Turning to Preliminary Title, Chapter xiii. Articles 187, 188, I find as follows—

“ Reserved equally (*igualmente*) for the military authority and jurisdiction, in quality of military offences, are the following.—”

“ Firstly : acts of disrespect (*los desacatos*) or violence, committed by any person whatsoever, against military men who are found” (*que se hallen*) (meaning it is hoped *only at the time of their being occupied*) “ in an armed state in military service.” Without this limitation in point of time—a limitation which under this wording a judge may apply or not apply as he feels disposed—any person whatsoever may be punished in a *military manner* by a *military man* for any act deemed by him an act of *disrespect* towards a military man.

“ Secondly : those” (offences) “ which are committed in like manner” (*tambien*) “ by any person whatsoever, either within the quarters, riding-schools, magazines, and other military edifices, or to the damage of any effects which are therein kept.”

“ Thirdly : acts committed by any person whatsoever in aid of a foreign enemy.”

By this third clause, compared with title ii. chapter i. articles from 252 to 261, a fair sparring match might seem to be set on foot, between judicatories military and civil, on this part of the field. But, as the hands of the civilians (it has been or will be seen) are tied behind them, no mutual bruises need be apprehended.

Now then, Sir—on any account whatever,—by behaviour ever so bad, or by behaviour ever so meritorious,—suppose a non-military man to have rendered himself obnoxious, to a man, or to a certain body of men, in the military service. Under the second clause, if by any means they can contrive to get him, at any time, within their “ *quarters*,”

(whatever may be their "*quarters*") or when they are upon a *march*, or in short upon *duty*, any where,—what is the injury it will not be in their power, in virtue of this article, to inflict on him, and without possibility of redress?—But no: they need not be at any such trouble. Let him be where he will, they have but to pick a quarrel with him—to bestow on him any such treatment, as may have the effect of drawing from him words of a "*disrespectful*" nature,—he is thereby placed at their disposal.

A judge upon the bench—suppose an occasion to present itself, in which it may appear to him matter of duty, to express, in relation to the conduct of any man of the military order, any such sentiment of disapprobation as a judicatory composed of men of that same order shall be pleased to regard as being expressive of *disrespect*: this judge, if he be a *person* (*persona*)—this judge,—though he be of the highest order of judges, nay the minister of justice himself,—is he not, Sir, by this article, placed no less absolutely at their mercy than the meanest citizen?

In all these several cases, not only is the judicatory to be military; the punishment is to be so likewise. The association is formed by *igualmente*:—one of the instruments of entanglement, which the genius of confusion, under the guise of the genius of eloquence, has contrived to put into gentlemen's hands.

By this instrument it is—by their *igualmente*—lodged as it is in article 188—by this it is that, ere we can obtain an adequate comprehension of what is done by this same article 188, we are made to go back to article 187: in which article the first word I see is a *tambien*, by which I am sent further back to the two first articles of this same 13th chapter, namely, articles 185 and 186; which same article 186 has nothing to do with the subject, being confined to ecclesiastical persons and ecclesiastical offences: for this same article 185, conceived as it is in general terms, seems to be inserted by way of ornament, the general terms not adding, as far as I can perceive, any thing to the mass of the more particular arrangements which follow it.

Of the words which the *also*—*Tambien* (or in like manner) in article 187, serve to introduce,—the following, in so far as my interpretation of them is correct, is a translation as literal as possible. "Reserved to the military authority and jurisdiction is the cognizance and chastisement (*castigo*) of the offences (*delitos, culpas y faltas*)* which,

* To these words, meant all of them to designate so many species of the genus offence,—to these words, to give the equivalent in English words, is not possible. The intention of them seems to be, to designate three degrees of criminality: in general, the highest standing first. But this distinction has nothing to do with the nature of the offence: it takes that offence for the greatest, to which it has been the pleasure of the despot to attach the greatest punishment. This was the distinction established by Napoleon. In the climax established in his penal Code, you have *contravention, delit, crime*. Of this order, that which is here in view in your proposed Spanish Code seems to be the reverse. By the word *culpas*, I was led to suspect the distinction to have been borrowed from the Roman law. But,

“contrary to their discipline respectively, military persons committed.” In the word *castigo*, may be seen the demand created for the reference thus made from the 188th to the same 187th article: for, thus it appears, that, by this word as inserted in 187, and by the word *igualmente* in article 188, applied to and engrafted upon this same article 188,—not only is the judicatory, by which persons not military are in these cases to be tried, appointed to be a military judicatory, but, as I set out with saying, the punishments which they are to suffer, are appointed to be military punishments.

Note that, by being thus subjected to the military authority as exercised by courts martial, the civil Judges of all classes are subjected to the arbitrary power of the monarch. For, in the Constitutional Code, by article 171, number the 8th, to the monarch it belongs to command the army and navy, and to appoint the generals and admirals: under which provision must be understood to be comprehended, (though forgotten to be expressed,) the removal of them, or else I do not understand how the command given to him over them can be exercised:—if not removeable, a commander in chief, when once appointed, will be absolute.

For this subjection of the civil judicatories to the arbitrary power of the King—for this subjection, thus established in an indirect way, through the medium of his necessarily arbitrary authority over the military judicatories, the constitution and the people would not, it is true, be much the worse, if those same civil authorities were, in a direct way, in a state of equally effectual subjection to that same power. But this is not the case. For, by that same article 171, number 4th, it is not by the king alone that the magistrates (*Magistrados* including I suppose judges) of all the civil and criminal tribunals are to be nominated, but by the king at the presentation of the council of State, in the

though the *ideas* seem so to be in both instances, in one of them the *word* is not. The word *culpas* corresponds indeed to the Roman *culpa*: but the word *delitos* does not correspond to the Roman *dolus*: which word—(a word that, considering its meaning in the ordinary language, namely *deceit*, was miserably ill chosen by the lawyer tribe) so far as in their language it means any thing, means *criminal consciousness*, their *culpa* meaning *temerity* pure from criminal consciousness: a distinction piteously ill adapted to the denoting of different classes of misdeeds, it being applicable alike to all classes. In gentlemen's proposed Code, the first chapter, consisting of one article, has for its title, *De los delitos y culpas*: neither in the title, nor in the body of the article, is there any such word as *faltas*: Of *delito* a definition is given, whereby the conception, so far as discernible, appears to correspond with that of *criminal consciousness*: and in like manner *culpa* with *temerity*. To these definitions, such as they are, no reference is made either in the articles here in question, namely, 185, 186, 187, 188, or in any other of the articles in which the words are employed:—words to which meanings are attributed, so different from any that any man can have found attached to them in ordinary discourse. In relation to the first article, the supposition thus proceeded upon, is—that every man carries it at all times in his head. In the instance of the five honourable draughtsmen themselves, or any one of them, can it, Sir, have been a true one?

In articles 189, 190, being the remaining ones of this chapter, I find not only the word *faltas* dropt, but also the word *colpas*. Was this by design, or by inadvertence?

appointment of the members of which, by article 233, 234, he has no other share than the choice of the number in question out of thrice the number presented to him by the Cortes. Thus as to *appointment*: and as to *removal*, “magistrates and judges” (says article 252, *judges* being now inserted—for thus are your immutable laws drawn up) “magistrates and judges cannot be deprived of their situations, without cause legally proved, and stated in their sentence: nor suspended, unless in consequence of accusation legally instituted.”

Whether, for words deemed wanting in respect applied to a soldier, a court martial shall be pleased to flog or beat the Judges of the supreme court of justice erected under Article 259 of the Constitutional Code, or content themselves with imprisoning them,—regard for the constitution will, I make no doubt, suffice for preventing the military Judge from signing, either a sentence of forfeiture, or so much as an order of suspension in their case. But, by any such regard for the constitution, it does not appear to me, how the mischief, if any, from the subjection of the civil judicial authorities to the arbitrary will of the monarch,—through the medium of his courts martial, as above,—will be very materially diminished.

Was it by design, Sir, was it by inadvertence, that the sort of arrangement you have seen, was proposed by gentlemen for your adoption? In either case, what say *you* to it? In either case, at the elections before the next Cortes but one, what will their constituents say to it?

Nothing of professional or other prejudice—nothing of exaggeration, Sir,—need you fear in me. Knowing something of your non-military judicatories in so far as they are upon the Roman models—knowing something of these and next to nothing of your military ones,—for the present, and until your judicial establishment, and system of judicial procedure, have been put upon a footing very different from that in which I understand them to stand at present,—supposing professional sympathies and antipathies out of the question, I have more confidence in the military than in the non-military ones. Why? Because the military ones have at any rate this distinguishing character in their favour, so at least I take for granted, namely, that by delay, vexation, and factitious expense, they have nothing to gain, while the non-military ones have every thing to gain. To real justice,—not only among us, as far as little less than sixty years of pretty close attention has enabled me to judge, but among you, as far as depends either upon the system of procedure or the ordinary dispositions of the judge, to real justice the citizen has, I should expect to find, a better chance in a military judicatory, than in the highest ordinary judicatory that is not military. If I have not been misinformed, in the case of offences of an insurrectionary nature, leaving or not leaving the cognizance of them to be shared by the non-military judicatories, you have, by a recent decree, given the cognizance of them to judicatories of a military cast:—to judicatories, in which, whether the judges be or be not of the military profession, (for I know not which is the case,) the mode of procedure is at any rate

military. To me this information, taken according to such conception as I was in a way to form in relation to it, was I confess not unsatisfactory. Now, said I to myself, there seems a probability of a decision: till now, there has been no chance. Of this conception, right or wrong, my observations on Judge Hermosa's panegyric on judicial forms and delays, may help to show the grounds.

In the present state of civil judicature,—even to give to military men the cognizance of disputes, on whatever subject, between non-military men and military men, might for aught I can say be an improvement. But, so long as there are judicatures not military, to which the cognizance of causes of any kind continues to be intrusted,—to think of intrusting to military judicatures the cognizance of causes arising out of disputes between non-military men on the one side and military on the other, this is what I must leave to the gentlemen in question, and to the construction put by them upon the Articles relative to the greatest happiness of the greatest number, if the remembrance of it has not dropt altogether out of their minds.

Among the sources of "*controverted points*," this topic relative to judicatories of exception, as you may remember, we have found reckoned: but no ground do I, on this occasion, find for any such supposition, as that the question whether the civil authority should be subject to the military, or the military to the civil, was of the number of these same controverted points. Unanimous, as far as appears, has been the opinion, by which the civil authority is placed, as above, in subjection to the military: the opinion unanimous, and the propriety of it too plainly manifest to stand in any need of support from *reasons*.

Sir, this is going even beyond *us*. Even in our government, military as, under our "*best of kings*," it is become, non-military men have not yet been delivered up to military judicatories. A servant of the king gives orders for killing us, and we are killed: but should a military man, by whom, without provocation we have been killed, be called to account for it, it would be in some ordinary and non-military judicatory that the account would be rendered, and to some non-military functionary or functionaries that the giving him impunity would be consigned: to the king's attorney general, by means of an instrument called a *noli prosequi* or a *nolle prosequi*; to the chancellor with the king's signature, by means of an express pardon, or (what is more commodious) to the judge, by whom the man is tried, by means of a virtual pardon, manufactured out of a quibble:—out of some recondite rule of evidence, or other rule of procedure, which, if it has not yet been made, can at any time be made for the purpose: just as penal law to any extent is, in the name of *common law*, made, every day, by this or that dependent creature of the king in the situation of judge, without putting the legislature to the trouble.

We have priests, to order unarmed and unoffending men, with women and children, to be killed, and ministers with kings at their backs to reward them for so doing: we have ghosts, by the receipt of which men are entitled to receive sinecures of thousands a year for such services.

All this may be done, and is done. But what with us remains as yet to be done is—to subject men not military, for offences not military, to be tried, without any such formality as that of jury trial, by a court martial composed of military officers. Yes, Sir: as yet,—though I cannot take upon me to promise how long it will continue so,—as yet for an offence not military, be it what it may,—and be the individual specially injured, if there be one, who he may,—a military man, be he who he may, may be tried, and is tried, by a judicatory not military: no non-military man is, for any offence, be it what it may, tried by a military judicatory.

Though you must have quitted Paris,—taking for granted that you have given directions for the transmission of my letters,—not having been forbidden, I give them and shall continue to give them the same direction as before.

One observation or two more, before I quit the subject of *method* altogether.

In different places of the proposed Code, I see a number of articles, incumbered, each of them, with a clause, by which, where the offender is a public functionary, an *ultra* punishment is added. Witness Articles 202, 203, 204, 206, 207, 213, 214: and in short such seems to be the method pursued throughout: also a separate clause to the like effect applying to ecclesiastics; as if an ecclesiastic, as such, were not a *public* “*functionary*.” But perhaps that title was regarded as not belonging to *Monks* or *Sinecurists*: and, in the apprehensions in which the punishments originated, foreign ecclesiastics, not beneficed in Spain, would naturally be included.

Various are the inconveniences resulting from this practice:—by it, the conception and memory, of individuals at large, is burthened with matter with which they have no concern: the bulk of the whole receives a useless increase: and, by a want of uniformity and correctness in the mode of expression, imperfections, too various to be here brought to view, are liable to be produced.

In another part of this same Code, I see a compartment, by the consistent and comprehensive use of which the inconvenience might at any rate have been lessened. I mean—in Part I, Title vi., containing, in 12 chapters, Articles 76, namely, from 493 to 528. It is headed—“*Of offences of Public Functionaries in the exercise of their duties.*” Offences, namely, *delitos y culpas: faltas* being, on this occasion, as on the one above noticed, omitted. Here then is a place, into which the matter relative to public functionaries, as above, should naturally have had admission: at any rate, supposing the words “*in the exercise of their duties,*” omitted: as they might have been without inconvenience. Unhappily, there is no reference from either of these places to the other: the consequence is—that,—ere he can be assured of his having information of the whole of the burthen, for ignorance of which, or any part of it, he is exposed to be punished, in many perhaps most instances by loss of office,—a public functionary must have hunted through the whole Code.

By the title thus given to that division of the Code, is not a presumption, Sir, afforded, that, by the matter of it, information, in some shape or other, was meant to be given, to all the several individuals so denominated, of the whole mass of the obligations respectively imposed upon them? For, unless it be in proportion as such information is possessed, how is it that, by the community at large, the benefit, expected from the fulfilment of these same obligations, can be received? the afflictive punishments, appointed in proportion to non-fulfilment, be avoided?

But, if so, how happens it, that no reference is there made, to so many other articles, in which other obligations not less serious are imposed upon the same persons? Thus faint are the traces, which in that part the proposed penal Code affords, of any regard for the two characteristic and fundamental articles of the Constitutional Code.

To confront with the method thus exemplified,—allow me, Sir, to submit to you the two short rules, by which the disposition of the matter, in the whole body of the law, has been governed,—in a Code, in the penning of which, that all-illuminating principle has never been for a moment out of sight.

Rule 1. Make known to every man what belongs to him.

Rule 2. Burthen no man with any thing that does *not* belong to him.

Would it be agreeable to you, Sir, to see them both in a nutshell? Behold them then in a Latin one. Rule 1. *Suum cuique*: Rule 2, *non suum nulli*.

1. Make known to every man what it belongs to him to know. Functionary or non-functionary, no more would I think of making a man suffer, for non-observance of an article of law, unless it had been put into his hands, having first been cleared of all matter in which he had no concern, than I would think of punishing a child, for the not having performed a lesson that had never been set him. “*No more*,” did I say? I should have said—*much less*. Think, Sir, of the difference as to the penal consequences!

A few observations,—showing, on the one hand, the all-embracing application capable of being made of these two short rules, on the other hand, the aspect borne towards them by this work of your illustrious colleagues,—I know not, Sir, how to forbear troubling you with.

Be the Code what it may, if, of the class to which the individual in question belongs mention is made, he is in point of interest either concerned or not concerned in it: if concerned, he is so either in quality of *party burthened*, or in quality of *party favoured*, or in both qualities.

Taking into mind the entire mass of the matter of law, including not only that portion which at the time in question happens to be actually in existence, but also whatsoever other matter there be, a demand for which may eventually come to be found to have place,—in a word, taking into mind the whole body of the law *actual* and *desirable* together,—let a man consider it with reference to the number and description of the persons affected in point of interest by the several

distinguishable parts of it, he will find it, according to a principle of division, at once natural and all-comprehensive, divisible into the *general Code*, and the system or assemblage of *particular Codes*.

In the general Code,—saving a few exceptions, which on inspection will be obvious to every eye,—the two opposite and correlative situations of *party benefited* and *party burthened* will be seen to belong alike to every member of the community : in so far as protection is afforded him from mischief at large, and in particular from whatever mischief he stands exposed to suffer from the effects of mischievous acts on the part of other men, the situation a man occupies is that of *party benefited* : in so far as coercion, whether in the shape of restraint or constraint, is imposed upon him,—whether for the purpose of preventing him from being an instrument of mischief, or causing him to be an instrument of good to other men,—or for any other purposes, all manner of bad purposes included,—the situation he occupies is that of *party burthened*. To the extent therefore of the whole field of the general Code, every man has this double interest in being acquainted with the matter of it : this double cause, for wishing to be acquainted with it. In any particular part of it, according to circumstances, it may be in the one or the other capacity, that the interest he thus has in being acquainted with it is greatest.

In the system of particular Codes, may be seen that one of the two great masses, which in this respect presents the greatest differences.

Persons taxed, &c. public functionaries, and parties to contracts—by these denominations are brought to view the three most extensive classes of persons, who, in the situation of parties specially burthened, have respectively an interest in the matter of this or that Code belonging to the system of *particular Codes*.

1. *Persons taxed, &c.* By this I mean the persons of various classes, that of public functionaries not excepted, on whom for the benefit of the community at large, or of this or that portion of it, the obligation of rendering *service*, in the shape of payment of *money*, or any other shape, is imposed.

In the particular Codes, by which taxes are imposed, for the use of the community at large, the several persons on whom respectively the contribution in its several shapes is imposed—these, commonly with the addition of others, to whom, on each several occasion, it happens to be in some way or other respectively connected with them,—are *the parties* thus specially *burthened* : the party *benefited* being, as just mentioned, the community at large. Where, instead of the community at large, the party benefited is either a particular class, or a particular individual,—his description receives the changes thus indicated.

To impose a tax, &c. is to impose the obligation of rendering to a party of this or that description as above, *service* in this or that shape : and of *service*, the simplest and most comprehensive shape is that which consists in the transfer of *money*.

In this one group will be comprehended, it is evident, a numerous and ever variable multitude of particular Codes, in each of which, in

the character of party burthened, a class more or less numerous of individuals will find itself interested : and, in the instance of each individual, there will be an assemblage of Codes, more or less numerous, and ever variable, in which he will find himself to have an interest.

II. *Public Functionaries.* In a particular Code, in which any thing is ordained that bears upon the situation of a public functionary, or a class of public functionaries,—as such, the functionary, in respect of any obligations imposed upon him, is the party *especially burthened* : if, in return for the services expected at his hands, the matter of reward in any shape is placed within his reach, he is in so far a party *especially favoured*. If, to enable him to fulfil any *obligation* imposed upon him, or in a word any service expected at his hands, *power* in any shape is conferred on him,—he is, in that character also, a party *especially favoured*. In respect of the reward, he may be said to be not only *especially favoured*, but moreover *especially benefited* : not so in the case of the power, if considered as charged with the obligation, and not accompanied with the reward. But note, that in many shapes, in many eyes, the power, though not accompanied with any distinct reward, and notwithstanding every obligation it is charged with, has the effect of reward.

Unless it be in the case of a monarchy,—concomitant to power in every shape, is, or is supposed to be, obligation in the correspondent shape—obligation to direct the exercise of the power to the rendering of the services, by which the function is characterized.

III. *Persons engaged in contracts.* In the case of a contract, the same person has place in the two opposite and correspondent characters : namely, that of party benefited as well as favoured, and that of party burthened. In the benefit expected from it, each party sees the *inducement*, by which he was led to take upon himself the burthen : and, unless in his eyes the benefit from the transaction had at the time been greater than the burthen, he would not have engaged in it.

Of the several *conditions in life*, the two most important and most extensively entered into—namely, that of *husband and wife*, and that of *master and servant*, are respectively the result of a correspondent contract. In the case of father and child, the two opposite and correspondent conditions,—though not constituted by a contract, to which the persons so related were both of them parties,—derive their existence from contract, namely that to which the two parents were parties, and in which the child was eventually among the subject matters of it.

That, on the one hand the burthen upon the conception and the memory, on the other hand the burthen upon the purse, may be as endurable as possible,—in the giving expression to this matter of the body of the law, repetition will of course be to be avoided as much as possible. If—in every particular Code headed by the name of the class it belongs to, not only the whole of the matter in respect of which a man belonging to that class is party benefited, but the whole of the matter in which he is party burthened, were inserted at length,—

no small portion would thus be to be printed twice over: and the burthen, as well upon the purse as upon the conception and the memory, would, in a proportion more or less considerable, be increased. In the instance of every particular class of persons,—in the Code, the matter of which belongs to that class, and on that account will require to be denominated from it,—in respect of some part of that matter, the individuals belonging to that class will be parties specially *benefited*, or at any rate parties specially *favoured*; in respect of other parts, parties *bound*. In whichever of the two characters a person is concerned, it is alike requisite, that information of the concern he has in it should be in his hand. In the Code denominated from the class to which he belongs, all such information must accordingly in some shape or other be contained: but, in that same Code, what part shall be inserted at length, what part no otherwise than by reference to the Code or Codes, denominated from this or that other class concerned in that same matter in a manner which is correspondent and opposite,—will depend upon particular convenience, as indicated by particular circumstances. Note on this occasion, that by one and the same group of legislative arrangements by which the man of but *one* class is a party burthened, men of *divers* other classes may be parties benefited: and so *vice versâ*.

In the case of a member of the *judicial establishment*, may be seen that of a public functionary, who, together with the power being charged with the obligation, of contributing, according to the nature and extent of his jurisdiction, to the giving execution and effect to the whole body of the law, or to this or that part of it, is therefore,—not only in a general way in his quality of member of the community, at once *party benefited* and *party bound* with relation to the whole matter of the general Code,—but likewise, with relation to the whole of the matter of the system of particular Codes, specially *favoured* in respect of the abovementioned power and specially *burthened*: burthened with the obligation of eventually giving execution and effect to it, and to that end, of lodging and keeping in his mind the import of it.

Only in proportion as it is known, can the law, or any part of it, be an instrument of good in any shape. But,—with every degree of compression that can be given to it,—the difficulty, of giving to the knowledge of it this necessary extent, cannot be inconsiderable. Any expedient, which promises to contribute in any degree to the lessening of this difficulty—ought it, Sir, to be left unemployed?—Of some of these expedients, I proceed to submit to you, Sir, a faint sketch.

I. Laws of *constant* concernment—laws of *incidental* and *contingent* concernment:—by the destination thus expressed, one instrument for the diminution of the burthen upon the conception and the memory, may be brought to view. In the case of a law of *incidental* concernment,—if the case be such, that the demand for attention to it will not be presented, till after a certain state of things has taken place,—a state of things, notice of which *cannot fail* of being received by the

parties, who, whether it be in the character of party burthened or party benefited, are parties concerned,—a consequence is—that of this part of the Code, be it the general, be it any particular one, the expression at length need *not* be given in every edition of this same Code: by indication, given in the way of reference, to a more enlarged edition in which the part in question is given at length, the purpose of conducting the mind to it will be answered: and, in the case of no individual, with reference to whom this state of things never does take place, will the Code, out of which the matter in question is omitted, be incomplete.

First instrument of reduction or compression, as above—distinction between articles of *constant* concernment and articles of *incidental* and contingent concernment. This distinction applies alike to the general Codes and to the system of particular Codes.

II. Second instrument of reduction or compression—distinction between *main text*, *expository matter*, and *rationale*. On my plan, the matter of each of the three Codes—penal, civil, and constitutional, is divided into general titles and particular titles:—or into particular titles and general titles: for it is not as yet altogether clear, which of the two orders will in each instance be most convenient. Take for example the penal Code. In the particular titles, the main text is composed principally of the denominations given to the several offences: denominations, followed each of them by a definition, and coupled with intimation given, of the punishments respectively attached to those offences. In some cases, to the name of a genus of offence thus marked out, may be added—added in form,—other more particular denominations, declared to be indicative of so many species—of acts contained under that genus. Be this as it may, by every distinguishable portion of the expository matter, designation will be made, of some particular species of act contained within that same *genus*: made by the very nature of the case, whether mentioned, or not mentioned, as being made.

Compared with the bulk of the whole, the bulk of the main text will lie in a very narrow compass. The particulars, contained in the expository matter, are employed in giving clearness and precision to the import of the name of the offence, and of the definition given of it. When, of this expository matter, a conception has once been obtained,—it will thenceforward, with more or less clearness, correctness, or completeness, be suggested by the name alone; still more effectually by the name with the definition added to it: and, the more completely this effect is produced, the more effectually will the main text answer the intended purpose, when the expository matter is detached from it.

So likewise as to the *rationale*. The use of the definition is—to distinguish the offence defined, from all objects with which it is likely to be confounded: in the first place, from all acts to which punishment is not meant to be attached in *any* shape—in the next place, from acts, in respect of which, for the purpose of punishment or any other purposes, arrangements in any way different are meant to be made.

Take for example the offence of *theft*. Neither in the Roman nor in the English law,—neither by any definition that has ever been given either in the way of statute law, or in the way of common law,—nor by any lights, afforded by reports of judicial decisions,—has any clear line been ever drawn, between a non-criminal taking, namely, on the supposition of *right* to do so, on the one hand,—and the taking by means of consent obtained by *fraud*, on the other. The expository matter will, in its own way, contribute to fix in the memory, when once let in by the conception, the idea of the true character of the offence : the rationale will, in another way, contribute to the same desirable end. But, moreover conversely, the effect of the association being mutual,—proportioned to the clearness, correctness, and completeness, of the view which these instruments of elucidation have given of the object, as designated by its denomination and its definition,—will be the facility, with which, upon every occasion, the import, of these same instruments respectively, will be recalled : recalled, by the denomination and definition together, or even by the denomination alone.

In this way, Sir, in my penal Code, you see three distinguishable parts, contained under the head of each genus of offence : the second and third,—each in its own way, throwing light upon the first, and thus forming a useful accompaniment to it,—but each of them capable of being detached from it. On this plan, in so far as there may be any use in separating them, nothing can be more easy : every printer will be competent to it. If there *be* any such use, it will be in the way of lessening the burthen : the burthen, whether it be on the conception, the memory, the pocket, or the shelf : not to speak of the pocket in the literal sense.

Of both *expository matter* and *rationale*, particular samples may be seen, in the first of those works of mine that have been edited in French by Mr. Dumont. You will assuredly neither expect nor wish, Sir, to see any thing of either of them here. What the relation may be, between what is said there on the subject and what I have said here, I know not. Neither eyes nor time will admit of my looking at it.

Other instruments of compression I employ : But, by any attempt to convey any conception of them here, I know not what further addition might be required, to a load which perhaps may already have been put aside as unsupportable.

You see already, that either the main text alone, or the main text with the expository matter, may be considered as an *abridgement* of the whole. Here then you see a sort of abridgement of the legislator's work : an abridgement made by the legislator himself. On this occasion, permit me, Sir, to observe, that the legislator's is the only hand, by which an abridgement can be made, on which any dependence can be placed with safety—can be placed without imprudence. Let the work at large be ever so replete with imperfections,—an abridgement, in which those imperfections were removed, would, to him who trusted to it, be no less mischievous, than one, in which the multitude of the imperfections had in the same proportion received increase. How can it be otherwise ?

In case of litigation,—not by the abridgement good or bad—not by the abridgement, but by the authentic work at large,—will the lot of the parties litigant be determined.

Thus in case of statute law. As to common law—in this case, an abridgement is an imagination of an imagination.

In either case, in what character is an abridgement capable of being of use? Only, Sir, in that of an *index*: an index, for giving information, of the places in which may be found those portions of discourse, by reference to which the fate of the cause, and thence of the parties, will be determined: an *index*—differing no otherwise, from the sort of implement more usually designated by this name, than by being more ample, and cast into a logical form instead of the alphabetical.

In the rules *suum cuique* and *non suum nulli* is included, you see, Sir, this instruction to the legislator. So order matters, that, in addition to the general Code in which *all* have a concern, each one shall have—have actually in his hands—every particular Code in which *he* has any concern: and *that* in a state separate from every particular Code in which he has *not* any concern.

The all-comprehensive survey, thus and for this purpose taken of the field of legislation—the division thereupon made of the rule of action into general Code and system of particular Codes—was there no use in it, Sir? Was it mere theory? had it no bearing upon practice? no influence on the greatest happiness of the greatest number? To the gentlemen in question—was it unknown, Sir? No, Sir, it was not, it could not be, unknown to them: it stared them in the face: it stared so strongly, that they shut their eyes against it. It came from the intrusive foreigner: it was not of *their* starting: it would have given them too much trouble:—in a word, it suited not their purpose. It was put aside accordingly. There, Sir, you see the cause.—No such thing was to be found in any of the most accredited Codes:—there, Sir, you see a pretence.

Such is the omission. Now for one little example of the consequences.

On my plan, under the head of *Husband and Wife*, in a particular Code so denominated, a document, in which all benefits and all burthens, attached by law to those two correlative conditions, are set forth, would be found. If it depended upon me, on entrance into that contract, into the hand of every man and that of every woman, should a copy of it be placed, or no such contract should be entered into: if some time before the ceremony, so much the better. They would then enter into the engagement with their eyes open, and not as at present blindfold. An instrument of this sort—would it be less instructive, less useful than a ring? But rings were made before Codes were made: before Codes were made, or the press for the printing of them invented. But moreover, from the relations between husband and wife come eventually those between father and child: of the particular Code intituled *Law of father and child*, notice would accordingly be given in the particular Code intituled *Law of husband and wife*: with or without intimation, more or less particular, of the details.

In the Committee's proposed Code, arrangements relative to this pair of correlative conditions, have place. Under what head? Under that of "Offences against *buenas costumbres*:" Articles 559, 560, 561, 562: offences against *good morals* or *good customs*. But, on or before entrance into this engagement,—what man, what woman, should this same Code pass, would think of buying a copy of it, and reading it? Even if they did set about reading it, would not they, to save trouble, be apt to glance over the titles? Glancing over the titles, would they see any one of them, in which either the word *husband* or the word *wife* is mentioned? Not seeing any such title, but seeing the title *offences against buenas costumbres*, would they be led by it, to expect to find in it any thing that they would have more concern in after their marriage than they had before?

One little example more.—Knowing that, in the Code in question, there is a compartment, in the title of which *functionaries* in general are mentioned,—every man, to whom that denomination belongs, will of course understand, that in some way or other he can scarcely fail to have a personal interest, in making himself acquainted with the contents. But, from any such title as that of *offences against the liberty of the nation*, what is there that should lead him to make any such inference?

In the Committee's proposed Code, I see a division thus intituled—"Of the offences," (*delitos y culpas*) "of public functionaries, in the exercise of their offices:"—Chapters xii; pages 23, from 132 to 155 inclusive; articles 76, from 453 to 528 inclusive. After so much said on the subject under its own name,—who, without notice given, would expect to see any thing more about it under any other name? Yet, under other names, more there is in abundance,—and no warning given of it: and, in particular, under that of *offences against the liberty of the nation*, as above.

Whatsoever be the benefits, undertaken to be conferred on a man by any part of the law—whatsoever be the burdens, imposed upon him by force of punishment,—do gentlemen know of any means a man has of making himself secure,—secure, either of enjoying the benefit or of escaping from the punishment,—without reference made to the law? Wherefore then did they decline taking the measure, necessary for the putting this saving knowledge within every man's power? Wherefore?—but that—either absolutely, or in comparison of some nearer object,—the greatest happiness of the greatest number was, in their eyes, an object of indifference.

Giving to a man this double security—giving to *every* human being that could read it, or hear it read, this double security—giving to the whole body of the law all this efficiency—a service such as this, would it, Sir, be a service without value? This service, the intrusive foreigner would have rendered, and would yet render, to your nation. This service, gentlemen would not themselves render, nor would they suffer him to render it.

They are Spaniards: to them it belongs to be apprized of all those

circumstances, affecting in each case the demand for legislation, that are peculiar to Spaniards: to them, yes; to him, not.—Be it so, Sir. But, by him who, having complete knowledge, will not make application of it, or by him who, having but incomplete knowledge, would make application of it to the uttermost of his power—by which of the two, with reference to the purpose, whatever it be, is most service likely to be rendered? On the part of the foreigner, the knowledge of the circumstances peculiar to Spain was wanting: relation being had to Spain, imperfections in any work of his would thence have been inevitable. Admitted. But, whatever would have been these imperfections, could there have been, on the part of the gentlemen in question, any want either of the inclination, or of the power, necessary to the correction of them? Thus stood the matter at the first. But, at present, and in future, whatever wisdom it may be, that, in their instance, composes the fruit of this indispensable local knowledge, it is now visible: It is seen in their proposed Code, and all foreigners, as well as all Spaniards, have it before them.

Two rules you have already, Sir, in a nutshell: permit me to slip into it one other such little pair, and I have done.

Rule 2. *Ideis iisdem, verba eadem*:—or thus—*Eadem natura, eadem nomenclatura*. Of this the converse is—Rule 4. *Ideis diversis, verba diversa*: or thus—*Alia natura, alia nomenclatura*. Change the expression, can any one avoid suspecting at least, that the ideas you meant to convey are changed likewise? Supposing it your intention to convey different ideas, could you take any other means than that of using different words? If you could not, then is the use you have made of different words a certificate of diversity in the ideas; and this certificate is a false one. If these rules be conducive to the ends of language, and the opposite course repugnant to the ends of language, try them, Sir, upon the proposed Code: try them throughout upon that great work, and see what will become of it. Of this I have already submitted to you a few exemplifications.

Thus is it, as I have so often had occasion to observe—thus is it, Sir, that in every page the same unfortunate spectacle is but too visible:—knees bent, before the fascinating art of *Rhetoric*: backs turned, upon her formal, but honest, sister *Logic*. Good this in poets: but is it so in legislators?

Ideis iisdem, verba eadem; ideis diversis, verba diversa—there, Sir, you see two rules of *expression*, two rules for the expression to be given to the matter of the law. *Suum cuique; non suum nulli*—there you have two rules of *distribution*: two rules, for the distribution to be given, to that same matter, on the possession of which, to so vast an extent, the difference between happiness and misery, in the instance of every human being, depends. Proceeding thus, what *Linnæus* did for natural history—what *Sauvages* did for the nosological branch of medicine,—that will this your troublesome correspondent do, Sir, for legislation, so far as life and faculties suffice. And already, though it

were by nothing more than these four short rules, is not some little progress made?

Lawyers, employed by the ruling few, with or without cognizance taken by a supremely ruling one—lawyers, linked with these their employers by a community of sinister interests—such are the men, by whose particular wills, governed by their particular and thence sinister interests, on this as on every other occasion, as far as has depended upon the state of the law, the condition of the millions has been disposed of. But, with the exception of those violences, from which the danger, to every man's person and property, is serious and manifest, their own included,—it is the interest of lawyers, that the multitude of offences in all shapes should be at its maximum,—in such sort as that the profit, from defending the injured against the injurer, and the injurer against the injured, shall be so likewise. Thus it is, that, with the above exception, mischief, in whatever shape produced by ignorance of the law, is by professional draughtsmen viewed with delight: and, it being to their high seated employers matter of indifference, hence it is, that we see it left, upon the footing at which it suits the interest of the lawyer class, that it should everlastingly be kept.

LETTER VI.

On the anxiety of the Legislation Committee to keep the door of the Cortes shut, against works coming into competition with their own. Conditions, on which Sanctionment is recommended. [Necessity of the free tone of these Letters.]

SIR,—SUCH, with the exception of the words in brackets, was the title of this my sixth Letter as announced in the first. Meantime, the matter itself has undergone no small change. Of the anxiety of the gentlemen in question to keep out of the sight of their colleagues, and thence of their constituents, rival production in general, and in particular your humble servant's actually existing works, and future contingent Codes, you have already heard more than enough. The anxiety on his part not to be so kept out of sight—this is the only anxiety, which, in the course of this letter, will give you any further trouble.

Before I take my leave of theirs altogether, I must however submit to you, in the way of contrast, a short recapitulatory sketch, of the principal objects, to the accomplishment of which, the opposite anxieties may have been observed directing themselves, and the different arrangements, of which the pursuit of the respective objects has been productive.

1. My object being the greatest happiness of the greatest number—the same which, in articles 4 and 13 of your Constitutional Code,

stands proclaimed as the all-comprehensive object of that official work, I have on every occasion held it up to view and made application of it.

Gentlemen's object being—what I will leave to themselves, or some one for them, to state,—they have not, on any occasion, as far as I can see, taken any the smallest notice of it.

2. As one means towards that same end, for the purpose of securing the aptitude of the work in relation to it—namely, in so far as depends upon appropriate moral aptitude on the part of the framers of the first draught, and for that purpose to shut the door against all particular and thence sinister local interest, backed with power sufficient to give effect to it,—I make offer of a foreign hand, secured by its position from all sinister interest.

Gentlemen's object being still what I will leave to some one else to name,—and, by that organ of impeccability, to which as far as appears they trust, their minds being, to their own satisfaction, sufficiently secured against all seduction from sinister interest,—their anxiety has, for an ulterior object, the keeping all such troublesome intrusion as effectually excluded as possible.

3. In further pursuit of that same end,—to secure aptitude to the work,—in so far as depends upon the above and the two other branches of appropriate aptitude on the part of the workman or workmen, namely, intellectual aptitude and active talent,—another object of mine, is—so to order matters, that no distinguishable arrangement shall be proposed, that has not for its support a distinguishable and openly expressed *reason* or set of *reasons*: and this security, the hand I offer is accordingly prepared to afford.

Gentlemen's object being still what I must leave to themselves or some one else to name,—their anxiety is—so to order matters, that no arrangement which in your nation is to have the force of law, shall have any one assigned reason for its support: in such sort, that whether there be any reason or reasons for it at all, and if yes what, shall remain for everlasting, a subject of unsatisfiable doubt and boundless conjecture.

4. In further pursuit of that same end,—regarding consistency of design, as highly conducive, not to say necessary, to the attainment of it,—lest, while in one part the end, whatever it be, is pursued by one course, in another part it be pursued by an indeterminately different course,—my anxiety is—that, throughout the whole field, the groundwork thus laid shall, if possible, be the work of one and the same hand.

Gentlemen's object being still what I must leave to some one else to say in a positive manner,—but, as far as appears to me, from their own declarations, coupled with the nature of their situation, what may be called, *mutual accommodation*—division of the whole stock of power and glory, upon the principle of a partition treaty,—their anxiety has been—to secure, and they have secured accordingly, to themselves and one another, this same means of mutual accommodation. And, of the result, and of the influence, which, if this work of theirs should become law, may be expected to be exercised by it on

the greatest happiness of the greatest number, samples have already been brought to view, and in greater number than can naturally be welcome.

5. Still, in pursuit of that same end,—taking into consideration, with reference to works of the description in question, the immensity of the demand for appropriate intellectual aptitude and appropriate active talent on the part of the workman, and at the same time the deplorable scantiness of the supply every where in conjunction with appropriate moral aptitude in the same breast—yes—every where, Spain itself (forgive me, Sir, for saying so) not excepted,—my strongly manifested anxiety has from the first been, and continues to be, to secure to your country, as well as to every other, now and at all times, the greatest obtainable number of works of the above-mentioned description, by hands of the above description, for those to whom it belongs to choose out of: and, towards the fulfilment of this wish, I have laboured with as much energy as ever monopolist employed in his endeavours to secure his monopoly. Witness the second of my letters to Emperor Alexander as published in my “*Papers on Codification.*”

Gentlemen, in their anxiety to keep out of the way the competitor from whose intrusion most trouble seems to have been apprehended,—took the measures, explained in the second of these my letters to yourself, Sir,—being such measures, as promised at least equal success against all similar intruders.

Under these circumstances, dispatch would naturally be, in their eyes, no inconsiderable object: and by the principle of the *division of labour*, applied as it appears to have been applied, not only was harmony promoted, but dispatch likewise.

But enough now, Sir, of anxieties: prepare yourself, for gladness. Whether, in the honourable breasts in question any such sensation is likely to be produced by the sight of any Code of my drawing, you are in a condition to imagine. In mine, the sight of theirs has been and is a source of real satisfaction.

The case is—in my way of viewing the matter, the tendency of this production of theirs, with reference to me, is—to promote in a variety of ways that intrusive design which is giving you, Sir, so much trouble.

1. It will, to an extent more or less considerable, lay open to my view those local circumstances, in the exclusive knowledge of which, gentlemen’s modesty has found a support to their claim of exclusive privilege.

2. It thereby lays before me, as well as before the nation which it is my ambition to serve, a complete map of those parts of the field of law, to which, if to any, the objection derived from foreignership can have any application. Spreading out the map before me, it enables me, on each occasion, to make those references—those clear and exact references—of which you may have been seeing, Sir, so many more examples than it can have been agreeable to any eye in the situation of yours to see.

3. In a word, it lays before me—it lays before the members of the

existing Cortes—it lays before their constituents,—it lays before the succeeding Cortes—it lays before the so deeply interested and observant nation, the only existing production, with which any one of those that I have in preparation has as yet to contend. It is not necessary for me, to attempt to affix any precise value to the use which this circumstance may be found to give to it with reference to my intrusive purpose. Suffice it to observe, that the less the value of the production in the eyes of the nation to which it looks for support, the greater will be its value with reference to the purpose of every intrusive rival.

Actual satisfaction at seeing the Code in its *candidate* state is one thing: eventual satisfaction at seeing it in an *elected* state is another. By the title of this Letter, as announced in my first, you may have been prepared, Sir, for a certain eventual satisfaction on my part, even in the event of my seeing the sanction of law given to the proposed Code in the exact state, in which it has been the subject of all the freedom you have seen taken with it. Of this same satisfaction you may at the same time have observed, that it is not altogether absolute and unconditional, but limited by conditions more than one. At that time, conditions more than one I had accordingly in view. But, on a nearer inspection, that my chance for satisfaction may be as favourable as possible, I have settled with myself to put aside these same conditions, all but one. Sanction then I say this proposed Code—Yes, and as soon as may be: if, within the time, the imperfections, which you yourself, Sir, have had the frankness to lay your finger upon, can, any or all of them, be removed, so much the better; not to speak of any of those supposed ones, which my own presumption represents itself as having given indication of. But, if nothing of this can be done, sanction it even as it stands at present.

Now then for the condition: it is neither more nor less than this—instead of the more commonly looked for everlasting duration, give it but a temporary, and that a short one. When experience,—and a long one need not be insisted upon,—has demonstrated its usefulness, then will be the time for giving to it that eternity, which will be so much more to the taste of its honourable authors.

Considering the terms, in which your letter speaks of this proposed Code,—were I even to indulge a serious expectation of seeing this condition annexed to the passing of it, I hope, Sir, you would not find it altogether an immoderate one. Such is the presumptiveness of my hope, it extends even to this—namely, that, in the endeavour to cause this condition to be annexed, your influence, which fame represents to me as so powerful, will not be withholden.

That, on the part of the gentlemen in question, any willing consent to this effect will be given, is, I must confess, rather too much for my hope. Feeling, each of them, on his own forehead, seeing in virtue of the partition treaty, each of them on that of every other, those two most instructive organs, which there has been such frequent occasion to touch upon—the organs of impeccability and infallibility,—they will

feel themselves under an incapacity of conceiving, how, in any such troublesome limitation, there can be any use. Alas ! The closer I look into this matter, the less sanguine is my hope. Turning to their “most accredited Codes,” whose wisdom they have made theirs, I have found no precedent on which my hope can anchor itself. To the best of my recollection, on the foreheads of all persons concerned in the manufacturing of all these several Codes, servants as well as masters, the two organs have been alike prominent.

Whither then shall this same hope of mine betake itself ? The answer is not difficult : to United Anglo-America, resting-place as well as cradle of all honest political hope. An example then I have already, in that rashly begotten, and happily expired, act of Congress, to which I have already had occasion, Sir, to solicit your attention, and to which, without fear of contradiction from *that* Ultramaria, I gave, or might have given, the denomination of the *liberticide law*. Here sits my hope quietly for the first moment. Oh but, cries (a voice,) that state is a democracy : ours is a monarchy : it is only in a monarchy that any such organs are seen. The illustrious *Gall*, by whom the organs of this class were first discovered,—did not the empire of Austria give him birth ? Under the notion of promoting the greatest happiness of the greatest number, do not the rulers in that American seat of anarchy, make the condition of that same greatest number, depend upon the will of that greatest number ? Can any thing be more absurd ? As for us, we make the condition of the greatest number—Oh, yes—and of all the rest—depend upon the will of one individual—one single individual, *without* whom nothing can be done, and *by* whom every thing can be done : every thing, so it be with that proper and necessary assistance, for the purchase of which it is that we have placed at his disposal the good things of this wicked world in all requisite abundance. In some countries there might be danger in such an arrangement : but in ours there is none. In some countries, all men’s first care is for themselves, and their own particular connections. But, in our country, when a man gets into an office,—if it be of a certain height, he forgets he has a self belonging to him : King and country are the sole objects of his care.

Well, Sir, be this as it may, I will not deliver myself up absolutely to despair. One other precedent I have in store. I should have said a mine of precedents : for such it is and a most abundant one. It is the practice of the government under which I write. Rotten as it is,—and hastening as it appears to me to be, to a change which can not be for the worse,—sacrificing as it does on all points of contrariety the greatest happiness of the greatest number to the supposed happiness of the ruling few and the supremely ruling one,—still, on points on which no such contrariety has place, examples of prudence, the fruit of long experience, are here and there to be found : and this is not the least conspicuous nor the least incontestable. *Codes*, it is true, we have none : the very word is horrible to us. *Statutes*, however, we have every year, and every year in a heap such as would outweigh a hundred

of your Codes. No, Sir : not a year passes, but amongst these statutes there are—I fear to say how many—for I have neither time nor eyes to count them—but I can venture to say multitudes, of each of which the duration is limited to a time certain, and that a short one. Witness even the *Six Acts*, which, for your information, I must call by the aggregate name of the *liberticide* acts, but which among us, are sufficiently known by the more concise and merely numerical name: Acts, which had the same object as that American Act, which by its death has been rendered the pride of that happy people, of which, during its life, it was the shame.

Even the statute, on which the standing army depends for its continuance—that standing army, by the dissolution of which the government would, if its own fears are just, be dissolved—even this statute (it is called *the Mutiny Act*,) lives but from one year to another. Trust not to me, Sir, for this : ask any body—ask our Minister at your Court, whoever he may happen to be. Not that, in the possession of any such expatriated court favourite, you will be likely to find any such dry and bulky matter as the matter of our Statutes at large. But, that which every body knows, you will find *him* knowing : and for this purpose it will suffice.

Here then, Sir,—under a government, of the determination of which, on every point of conflict, to sacrifice the greatest happiness of the greatest number to that of the ruling few, you cannot entertain a doubt—under this government, the life of which is in its own persuasion, no less inseparably attached to that of a particular law, than that of Meleager was to the log which somebody threw into the fire—under this government you see no such fear has place, as that of mischief to itself, from thus rendering the law capable of going out at the end of a twelvemonth. What say they then ? Were it only for appearance sake, cannot gentlemen be prevailed upon to assign to this Code some experimental duration ? If yes, say then one year, say two years : and, in either case, from thence, as is the custom with us, to the end of the then next Cortes.

You see Sir, how mistaken the notion would be—that, between this exertion of self-diffidence and prudence, and the practice of depredation, to an amount so far above any thing that in your country men can have any conception of, there could be any thing of practical inconsistency. Those who require such comfort, let this comfort them.

But, (methinks, Sir, I hear you saying to me) this contentment on your part, is it in any degree consistent, with the opinion, of which such copious intimation is given in your preceding Letters ?

Sir, I will tell you simply how that matter stands. Good and evil may be considered in an absolute point of view, or in a comparative : compared with a greater, a lesser evil is good. No mass of law so bad, that I would not vote for it, on condition of its taking the place of a worse.

Of the state, in which the penal branch of law exists at present in your country, gentlemen have, in their preface,—though but in the way

of allusion, as to a state of things out of dispute,—given that account, to which, in the second of these Letters, I had occasion to allude. All circumstances considered, I can scarcely entertain a doubt, but that, in comparison of such a Code, even that, which I have been so tediously commenting upon, would be a blessing.

From yourself, moreover, I learn, Sir, that—to an extent, the precise limits of which are not known to me, but which appears not to be a narrow one—the existing atrocities alluded to fail of receiving execution and effect. Here then is my hope and my consolation. Of the *existing* Code, the articles which in their view are unfit to receive execution, have, to a considerable degree, actually failed of receiving it. An inference I indulge in is this: of the *projected* Code, the articles which, in my view, are unfit to receive execution, would, to an amount more or less considerable, in the event of its becoming law, be in that same case.

In a certain state of the law,—the existence of the human species depends upon the degree of execution given to the law: or, at any rate, the more exact the execution, the greater is the happiness of the greatest number in the community in question. In this state is the law, for example, in the Anglo-American United States: notwithstanding the remnant of that poisonous matter, which was originally imported from the Augean stable on the other side of the water; and which the lawyers, who fatten upon it, still keep, on the penal and civil part of the field, unexpelled.

In another state of the law, the existence of the species depends upon the non-execution of the law, and the consequent impotence of the ruling tribe: of the ruling few, under the supremely ruling one. In this state, for example, is the law, in a country which it would be superfluous to name. Carried into full execution and effect, libel law would of itself suffice for the extirpation of the inhabitants: for the conversion of all dwellings into jails, of all the inhabitants into jailers or prisoners; and,—by giving this destination, to all those on whose productive labour, themselves and their fellow-countrymen depend for subsistence,—substituting starvation to existence.

In your country, though utterers and readers of libels, all newspapers without exception included, are not so numerous as in the one just alluded to, laws, I cannot doubt, might be found, by the aggregate virtue of which, if fully executed, an equally complete clearance would be effected.

Wherever Roman law has reigned,—in addition to a functionary, by whom, under his own name, power of pardoning, applicable to offences in general, has been avowedly possessed and exercised,—other functionaries there are, by whom, without the name, that same power has been possessed and exercised. Where the judicatories have not possessed the power of giving execution to penal laws of their own motion,—nor without being called upon by a servant of the Monarch in the situation of prosecutor general,—the whole of this covertly pardoning power has had *his* single breast for the seat of it. In so far as this

has been exercisable by them at their own motion, this mode of proceeding has been styled the *inquisitorial*; and, within their several ranges, the power of the prosecutor-general has had the judges of the several judicatories for sharers in it. According to *Banniza*, thus, for example, if my recollection does not deceive me, stood the matter in the Austrian dominions; according to *Boehmer*, in the Prussian. I should expect to find the case standing on much the same footing among you: not to speak of the rest of Europe.

With us, the matter stands as yet upon not quite so bad a footing: the power of giving effect to the laws on which personal security depends is not made an object of monopoly: our monarch being God upon earth, as we are all of us taught from Blackstone, our lawyers, as far as depends upon them, have, it is true, given to him the power of putting to death every man it would be agreeable to him to put to death, on condition of finding one hand to do the job, and another, by the counter-signature of a pardon, to concur in giving impunity to it. But, commodious as upon this statement it may seem, this mode of proceeding,—signatures and countersignatures being visible things,—has not yet become a customary one: modes not less effective but less conspicuous have hitherto obtained the preference: discriminating slaughter has not yet been visibly added to indiscriminate. Matters, however, are in preparation for it. Recent progress has been made. The last session but one or two produced a statute, by which the right of certain relatives to prosecute for the murder of the correlative without permission from the Monarch,—in which case, on conviction, a pardon from him was without effect,—was abrogated. Since then, the life of every man in the kingdom hangs by a thread, which a word from the king may cut at any time. Mine, Sir, remaining as you see still uncut, what gratitude do I not owe?

I beg your pardon, Sir—I have been digressing. What belongs to your case is this. Under a government, which has for its real object the supposed happiness of the ruling few through the sacrifice of the real happiness of the subject many,—the system of law being to such a degree bad, that the execution of it if complete would suffice for the extirpation of the species,—in such a state of things, if the species remains in part unextirpated, it must be indebted for its existence to some arbitrary power, by which the purposes proposed by the makers of the law are prevented from being carried into effect. While your judicial establishment, and your system of judicial procedure, remain upon their present footing, or upon any footing standing on a ground of Rome-bred law,—the otherwise natural effects, of codes drawn from that source—of codes such as the one I have before me—will, in arbitrary powers such as those I have been speaking of, find a palliative. And on this palliative rests the confidence I entertain, of seeing your country still inhabited, even supposing the code in question to pass in its own words unchanged.

You are now, Sir, in a condition to judge, whether, on the satisfac-

tion above declared, in what degree so ever well or ill grounded, inconsistency can be charged.

Though, beyond the abovementioned temporariness, lest you should be asking too much, I should be sorry to see you asking for any thing in the character of a *condition*,—a few other things there are, which I will venture to mention in the character of simple propositions.

1. One is—that of an Article, declaring, that for giving increase to the quantity of punishment appointed in any case by the new Code, no recourse shall be had to any at present existing portion of statute law: any more than for applying punishment, in any shape or degree, to any act to which this same new Code has not applied punishment. Something in this view I should expect to find actually done, but time and eyes forbid the search.

In title I. chapter xiii. as above mentioned, I see a chapter, entitled “On delinquencies (*delitos*) and delinquents not comprehended in this Code:” and therein, besides laws relative to matters ecclesiastical and ordinances relative to matters military, I find—namely in Article 185, over and above *delitos*, mention made of *culpas* as being commissible against the regulations or ordinances which govern (*rijan en*) any matters or branches of the public administration. But, of these non-comprehended portions of law, I see no more particular designation given.

For the purpose here in question, the more obvious, as well as the shorter and at the same time the more complete course, would be—a general clause, killing at one stroke, with the exception of such as were kept alive by a list made out for that purpose, the whole body of the penal laws found in existence. This would be the only endurable course, supposing the survey, taken on this occasion of the field of penal law, an all-comprehensive one. But, to the gentlemen in question,—if the truth may be confessed, this same idea of all-comprehensiveness, considering how natural it is for a man to measure all other men’s faculties by his own, scarcely should I expect to find it an endurable one: and, at the hands of him by whom accomplishment is regarded as impossible, accomplishment cannot reasonably be looked for.

Even among us, among whom, how ill so ever applied, experience in the field of legislation is so much more abundant than with you,—men, in other respects not destitute of intelligence, are not wanting, to whom the idea of setting, in any such way, any precise bounds to the demand for punishment and coercion, is an intolerable one.

“Not being myself (without more trouble than I choose to bestow) able to descry any such limits, the thought that, by any labour he can bestow, it should be in the power of any other man to trace them out, is intolerable to me.” Such is the confession, involved in every declaration, of the impossibility of substituting on the field in question light to everlasting darkness. What is above said with relation to your *Statute Law*, or, as it is called, *Written*,—may, with little or no difference, be found applicable to your *Common Law*, or, as lawyers love

to call it, (because there is so much writing in it,) *Unwritten Law*. I mean the *Rome-bred*, commonly called the *Roman Law*. In it I behold a still more vivacious, as well as venomous hydra, than in your statute law. A hydra, yes:—but, unfortunately, not in your Legislation Committee—no, not even in its President, whatever he may behold in a looking-glass, can I behold a Hercules.

What if, by their Code,—after the storm of horror and contempt poured forth upon the system of penal law which they found in existence,—Gentlemen should be found to have left it in a state of undisturbed existence; adding thus, instead of substituting, the new load of their own framing, to a burthen declared by themselves to be an intolerable one? Should such an omission be found actually to have place, your exertions, Sir, will, I hope, not be wanting for the repair of it.

Do what you can, Sir, I cannot very well see how, in the situation of Advocates, a set of men, nurtured in Rome-bred law, can effectually be prevented, from pointing, if not in a direct, in a little less effectual though indirect way, to the old hag for an interpretation of it: nor,—without which the call would be hopeless,—men, in the situation of Judges, impregnated with the same poisonous milk, be prevented from giving ear to it. Thence it is, that, for substituting certainty to uncertainty, cognoscibility to uncognoscibility, there exists not any possible instrument, other than a complete mass of expository matter, subjoined all along to the main text, and intervening between the main text and the *Rationale*, interwoven, as in my abovementioned French works, stands not only proposed, but, if I do not misrecollect, exemplified.

Yes, Sir, when completed, the collection of Codes should, either in the way of insertion or in the way of reference, contain every thing, to which the force of law is given by government: and, while it embraces every thing in existence by its power, it should embrace the whole contingent future by its providence.

One little proposed arrangement I would not venture, Sir, to trouble you with, were it not for the facility with which—and, I hope, without any very sensible wound to national honour and glory, or soreness in the organ of infallibility—effect might be given to it. In this Code, the numbering of the Articles goes on, I observe, in one and the same series, from first to last: number of the last Article, 829. In this arrangement, no method has place but that of the numeration table, nothing of what is meant by *classification*. But, along with this arrangement, comes a system of classification in the customary form; or, at any rate, a form resembling what is customary. First comes a Part styled *The Preliminary Part*; then come Part the first and Part the second. Under Part the first, I find eight Titles; under Part the second, three: under every Title, except Title eighth and Title ninth, I find Chapters more than one: and, under every Chapter I suppose there may be, under little less than every chapter I am sure there are, Articles more than one.

This being the case, the little arrangement I would venture to propose is—that, to the number of the Article, reckoning from the first

in the whole work,—be added, or substituted, the number of the Article, reckoning from the first in the Chapter of which it forms a part.

Suppose this not done, note, Sir, the inconvenience. In process of time, comes an Article to be inserted, or an Article to be repealed. Take in the first place the case of insertion. Suppose the insertion made at the end of the series, the system of designation receives no disturbance. But, suppose it made at the commencement of the series, the consequence is—that, if the numerical order is still preserved throughout the whole of the series thus constructed, the numerical names by which the Articles were originally designated are now all erroneous: and, to the number of each, the number of that which was next in the series must be substituted, or confusion will be the result: and, in whatever part of the series the new Article is inserted, the numerical names of all below it remain indeed unaffected, but those of all above it require to be subjected to the change: so, in case of a repeal, the consequence is—a state of things which is the *converse* of the above. In practice what will be the result? That no such insertion or expunction will have place. Whatever is therefore done, must be done by an independent law, leaving the numerical arrangement undisturbed. But, in this way, the logical arrangement, which has been given to the existing series of Articles, cannot be extended to any supplemental ones. Now,—instead of the arithmetical arrangement throughout, with the logical arrangement here and there jostling it,—suppose the usual logical arrangement had been employed, with the arithmetical, as usual, in subordination to it. In any Title, and in any Chapter of that Title, suppose a new Article added: at the end of the series of Articles contained in that Chapter let the addition be made,—the classification will be still preserved, and every thing left unchanged and undisturbed.—Conversely, suppose repeal made of an Article in that same Chapter,—at the end of the series of Articles belonging to that Chapter insert an Article, giving notice that the Article in question is repealed. In case of substitution, the notification will be—“to such an Article (designating it by its number) substitute the following.”

With that same method of theirs, it being theirs, the Honourable authors of the logical method in question were, it must be presumed, not ill satisfied. The little alteration here submitted has no other object than the giving to that same method of theirs a degree of undisturbed continuance such as it could not possess otherwise. If not *adoption*, this little intrusion may at any rate, I hope, obtain *forgiveness*.

As to the origin of this change-excluding method,—in the *organ of infallibility* I cannot but suspect it might be to be found.—*Question to the Genius of the organ*: To a work thus perfect, the Demon of presumption himself, could he ever have the effrontery to propose, in any part, a change?—*Answer*: Impossible.

Under the inspiration of this same Genius it was, that the authors of the Constitutional Code ordained in positive terms that no change should have place for eight years: tacking, at the same time, by a stroke of refined policy, to the end of that period, an indefinite one. And,

with the inspirations of this same Genius, the honourable authors of this same projected Penal Code appear to be no less sufficiently impregnated.

Quitting the *allegro*, I must return to the *penseroso*.

Proportioned to the severity, if there be any, in the above remarks,—especially if in any degree it should be felt to be warranted by justice,—will naturally be—the sensation of chagrin, produced in the breasts, of whatever persons are, in virtue of the parts respectively taken by them in the work, the subjects of them. Believe me, Sir, or believe me not, it is not without a correspondent chagrin on my part, that any such unpleasant sensation can ever present itself to my mind. Imagination finds no difficulty in placing me in their situation. Triumph, were I assured of it,—triumph on any occasion, and in any shape, if the persons triumphed over were present, would to me have more of concern than joy in it.

In no sensitive being could I ever yet witness pain,—whether body and mind, or mind alone, were the seat of it,—without catching, as if by contagion, a portion more or less considerable of it. It is thus that I am constituted: that I am so, is it not known to all that have ever lived with me?

The consequence is,—that in the present instance, lest I should fail in the fulfilment of what appears to me my duty towards your nation and mankind at large, it is all along necessary for me, to keep my mind abstracted, from any effect it may have upon them in any such unpleasant way, as completely as possible. All this while, in supposing the production of chagrin by such a cause, I look—not to the honourable gentlemen in question, of none of whom have I the honour to know any thing but what I see in public documents,—but to the universal and unchangeable nature of man, in the situation in which I see them placed. It is to this cause, as much perhaps as to any other, that we are indebted for libel law: it is for this cause, that men in such abundance—(and the gentlemen in question could direct your regard to some examples)—are so eager in their endeavours, to consign to ignominious death, those whose misfortune it is to differ from them. In speaking of chagrin from such a cause, I speak of that which, it seems to me, can scarcely fail to exist: not of any thing which I should expect to see declared. How it is with man in such a situation, often have I had occasion to observe. Ask him, while the animadversion is applying itself—speak of the effect naturally produced by it, and express your own regret at the thoughts of it—you will be taken up short, your sympathy will be taken for insult: and the more acute the feeling is, the more decided will be the protestations of indifference.

Among the effects of these operations of mine, if any effects they have, I cannot therefore but number these unpleasant ones. As to their original cause, operations and effects together, it is no other than that which, on every occasion, has place in the case of the medical operator. Exactly as much unkind feeling, and no more, have

I towards the gentlemen in question, collectively and individually, as the surgeon has towards his patient. When the surgeon operates, it is for the good of the individual operated upon, and, with the exception of his particular connections, no others. In my case, it has been for the good of all Spaniards of both hemispheres, that, in wish and endeavour at least, I have been operating, and through Spain, sooner or later, for the good of the whole human race. Considering that, in all this, I make no personal sacrifice in any shape worth mentioning, judge, Sir, whether, without much danger from the imputation of credulity, you may not venture to believe me.

Be that as it may, judge then, Sir, whether, by the contemplation of any such universally encountered uneasiness as above, I should have been justified in turning my back upon the unmeasurable mass of misery, which these remarks of mine, such as they are, have been labouring to alleviate, and in the production of which I should have been a participator, if, by any such narrow sympathy, my pen, such as it is, had been stopped. Think, Sir, whether, by a single instance of execution given to a single one of the one-and-twenty homicidal articles above spoken of,—every one of them, in the view of so many other attentive observers of human nature as well as myself, so much worse than useless,—suffering could fail of being produced, to a greater amount, than in all five of these same illustrious breasts put together, could be produced, by any thing that has been said, or ever could be said, by the unknown stranger,—placed as he is for ever out of their sight as effectually as if by the hand of death.

Ere this, your inward sanction cannot, I think, Sir, but, to an extent more or less considerable, have been given, to the persuasion, in which, on my part, this correspondence commenced: I mean, the persuasion of the inevitable disadvantage, with which, with reference to the greatest happiness of the greatest number, it could not but have been carried on, had my part in it been to be strained through a censor's sieve, though a *Conde de Toreno's* had been the hand that held it. Thus much I can venture to affirm, and without fear of contradiction,—that, in the multitude of remarks, the freedom of which, be the justice of them what it may, has been so undeniable,—there exist, in no small proportion, such as, even in the persuasion of their justice, a prudent man, in your situation, could not have brought himself to give utterance to. Whatever were the demand for animadversion, could any such man have poured forth any such body of animadversion, on this same work of your selected colleagues, either in their presence or out of it? In your situation, could a man have spoken in any such strain, of the object of such extensive idolatry—(oh that there were none worse grounded!) your Constitutional Code? In your situation could a man have spoken in any such strain of aristocracy at large? In your situation, could a man have spoken of the order of lawyers in particular, as I have found it so continually and indispensably necessary to speak of them? In your situation, could a man have spoken there of the order of churchmen, as I have already begun to speak, and shall have to

speak again, in my next and as it were postscript letter? In your situation, could a man have spoken of the situation in which your Cortes is doomed to sit, breathing an atmosphere, loaded as I have shown it to be with the fumes of sinister and corruptive interest? exposed to a *miasma*, against which scarce could a *Fontana d' oro*, in the metropolis of every province, afford a sufficiently powerful antidote? In your situation, could a man have any thing near so strongly invited attention, as at every turn I have seen reason to do, to the union of the most perfectly unrestrained discussion, with the perfection of security, harmony, public economy and good government in every imaginable shape, in the instance of the Anglo-American United States? In a word, in your situation, could a man have spoken, as I have found but too much occasion to speak, of monarchy?—of monarchy, in any the least absurd and mischievous form in which that disastrous result, of primæval necessity in the infancy of society, can possibly present itself?

[In* your situation, could a man, Sir, have spoken, as I have found but too much occasion to speak, of monarchy? Fancy not, however, from any thing I have said—fancy not, Sir, that you have been hearing me say—*Rid yourselves of your monarchy*. True it is, that no government, to which the name of monarch ever has been or ever can be applicable, ever has been or ever can be any thing better than a system of established plunderage: plunderage—regulated indeed, but only because,—unless it be in this as in every case regulated,—the matter of plunderage, and with it the profit, must soon cease. In Spain, monarch's established share,—according to official accounts, taken and made public here about the year 1787,—one fourth of the whole expenditure of the government: besides ulterior expenditure, to an amount unascertainable and unlimited.

True it is, that by no man has any attempt been ever made—by no man will any attempt be ever made—to show in what way it is, that, from the subjecting all to the will of one or of a few, the happiness of the greatest number can receive increase.

True it is, that by no man has any attempt been ever made—by no man will any attempt be ever made—to show how, by giving every thing to one or to a few, or by placing every thing within the grasp of one or of a few,—subsistence, abundance, or security in any shape, can, any more than equality, be afforded to all, or to so much as the greatest number.

True it is, that by no man has any attempt been ever made to show—by no man will any attempt be ever made to show—that, in any instance, in which the ruling few were not dependent on the will of the subject many for their continuance in rule, they ever failed to give to their own interest the preference over that of the subject many; or how,—in case of every such constant preference of every one else to self as they pretend to give,—the human species could so much as continue in existence.

* Though written at the time, the paragraphs between this and the bracket in p. 96 were not inserted in the Letters as sent to the Conde de Toreno.

Is it in human nature,—that a monarch, full of resentment for restraint endured—restraint, which in every shape is in his eyes an injury—is it in human nature,—that a man so situated should, by any thing but terror or impotence, be induced to part with any the least particle of power, which he has been in use to exercise, or so much as to wish for?

Is it in human nature,—that, in a state of indigence, (and so long as he has any thing that is not his own, every monarch is in a state of indigence) any such man, in any such indigence, should ever, with patience, behold himself reduced to a state of still more pinching indigence?

All this, Sir, without much strain upon the fancy, you may actually hear me saying: but still what you do not hear me saying is—*Rid yourselves of your Monarchy.*

Regulated plunderage, to whatever extent carried on, is still a less evil than unregulated plunderage to the same extent is.

Conducive to the greatest happiness of the greatest number no government can be—if, and so long as, the greatest number think the contrary: for, can any man be happy, any further than in his own opinion he is so? And, on this subject, or any other subject, sitting where I do, how can I tell what they think? Whatsoever care has even as yet been employed upon their minds, has it not been employed to make them think wrong, or, rather than that they should not think wrong, to prevent them from thinking at all?—No, Sir—in a few years, in no eyes in which the greatest happiness of the greatest number is the only legitimate end of government,—will any government, other than that of a representative democracy as in the Anglo-American United States, be *legitimate*. But, either in one body, or in a cluster of confederated bodies, have you,—in any such proportion as *they* had it, or in any other sufficient proportion,—the stuff of which representative democracies are made? A representative democracy, not less necessarily perhaps than a monarchy, must have a chief. The Americans had their Washington: and, in default of him, with the exception of his next successor, every President they have ever had, would have made a Washington. But, among you? is there any thing out of which a Washington could be made?—There may be for aught I know: but how can I know?

Desirable or undesirable, in a constitution—made, of materials such as yours is made of—materials so irreconcilably discordant,—change, in one direction or in the other, is in my eyes altogether unavoidable. Saying this, what I do not say is—*Rid yourselves of Monarchy.* But what I do say, is—Whatever change you make, be it in favour of the greatest happiness of the greatest number,—not of the ruling few, or of the supremely ruling one: be it, towards a form by which all causes of insecurity and discontent are excluded, rather than towards that form, under which, among you, they were so recently operating; operating, all together, and with a so disastrously effective force.]

Now, Sir, permit me for a moment to indulge in a supposition, which, in its matter, whatever in your eyes may be the probability of

it, will, I am confident, not be, in every part, displeasing to you : it is this. After sight of the objections brought to view,—Gentlemen, being in their own minds satisfied of the reasonableness of them to an extent more or less considerable, come forward,—and, on such considerations as, in their judgement, shall be best suited to the occasion, declare themselves content, or desirous, as they think best, that this work of theirs shall sleep a while on the shelf : or, (to take another supposition, and which, for the reason above given, may be perhaps a preferable one,) to an extent more or less considerable,—amendments, of the nature of those which I have ventured to submit, together with others that may perhaps be suggested, having been made,—the proposed Code, at their presentation, passes ; but with a clause confining the duration of it to a certain limited time, and that, as above, not a long one. To these two suppositions, have patience with me, Sir, while I add one more. At the suggestion of these same most competent hands, not only is the door thrown open, but invitation given—given to every man whom it shall find disposed to accept it—to deliver in, with or without further remarks on the only as yet proposed Code, a Code of his own penning, with or without an interwoven *rationale*, as he shall be advised.

Whatever may have been the sins found to have been hitherto manifested, (always supposing that into a political situation so elevated it is possible for political sin to have found entrance,) whatever may have been the sins manifested,—a confession, such as the above, would it not be an ample—would it not, Sir, be a glorious atonement ? By such sin, followed by such atonement, would not more merit be made manifest, more magnanimity displayed, more admiration deserved and called forth, than if in no shape sin had manifested itself ?

Condemned, on the occasion of I forget what controversy, with *Bossuet*—condemned by the constituted authorities of the country and the time,—Fenelon, Archbishop as he was, of his own motion, ascended his own pulpit, and, in the face of the assembled multitude, read his own condemnation, together with the retraction he disdained not to make in consequence. It is for the multitude at large I bring this anecdote to mind : for to yourself, Sir, it can scarcely, I think, be new. On a field of controversy such as that was—on the part of a mind such as that of the author of *Telemachus* was—sincerity may, to some eyes, appear not altogether exempt from dispute. Not so either self-command or enlightened policy. Matchless is as yet the splendour, with which the heroism of the man, displayed in a shape so unexampled, stands illuminated. Of victory over others, you may see almost as many examples as you see contests. Examples of victory over self, you may look for till you are tired. The retraction made by Fenelon, was made under the eye, and in conformity to the known pleasure, of a man, from whom, on his part as on the part of every body he ever saw, every thing imaginable was to be hoped and feared. If, in consequence of any of the arguments submitted to yourself, Sir, in the first place, to the gentlemen themselves in the next place, any such

self-sacrifice as above suggested should come to be made,—it will, by an admiring public, be seen to have had any thing rather than hope or fear, looking to the individual, at whose suggestion it will have been made.

Well, Sir, if, in the honourable eyes in question, all this inducement is not yet enough, here is something more. Over the world of ideas, with this their instrument of conquest in hand, their aim has been (in their preface does it not stand sufficiently avowed?—) universal empire. If, without any to share in it, it be in their eyes sufficiently within their reach, they will continue still to strive for it. In the other case, putting off Don Quixote, and putting on Sancho Pança, permit me to say, Half a loaf is better than no bread. So says our English proverb, for which there can, I think, scarce fail to be a Spanish one. If, leaving to some other, as it may happen, that lower part of the honour which belongs to the *fundator incipiens*, gentlemen's magnanimity can content itself with that upper part which belongs to the *fundator perficiens*,—that highest part may be still their own. Let experience, Sir, declare whether this sort of peaceful conquest be quite so remote from the region of probabilities, as some would be glad to see it. By a rare union of merit with fortune, circumstances favouring, the Spanish Constitutional Code—has it not already found numerous adopters? adopters in all nations by whom the attempt has been made to render Monarchy (Oh, Herculean, or rather Sisyphean labour!) consistent with the greatest happiness of the greatest number? Let them have received a plan, in which the dictates of that principle are pursued with undeviating consistency—pursued over the two remaining parts of the field of law—the *Penal* and the *Civil*,—think, Sir, to what extent, sooner or later, Spain may not, by their hands, have spread over the willing nations, the blessing of her laws!

Whatever may be their determination on that question, in mine there can be no difficulty. If life and faculties continue, my Codes will successively be drawn up. The encouragement, which, from so many quarters, I have received, would, of itself, have been a sufficient *stimulus*. The discouragement, received at the hands of the Legislative Committee of the existing Cortes,—not to speak of the Cortes itself, which on this ground knows nothing of what it has seen, heard, or received,—has been an additional stimulus. As the work proceeds, it will find its way into various languages: the Spanish will not be the last.

Into your *Ultramarina*—including all that *was* your Ultramarina—it will, in that as well as other dresses, find its way without difficulty.

Thus far my determination reaches. But now commence my uncertainty, and my desire of information, in so far as, in a case such as that in question, information is possible. Is it through the regular channels—or is it in the way of contraband, with other piece-goods, that the fruit of my endeavours to serve your constituents will have to make its way, to them, and to their paulo-post-future representatives? I am prepared for both sides of the alternative: but it would be a

convenience to me to know, in which of the two the greatest probability is to be found.

Sir, when, in dernier resort, for giving effect to whatever endeavours can be used to serve your country, I put on the garb of a malefactor and assume an attitude of defiance, it is not—indeed it is not—with a light heart. But, in the state in which your legislation still is: still is, and for I know not what further length of time seems doomed to be,—what else, by a man whose first regard is neither for laws nor makers of law, but for those for whom such laws, in as far as they are any thing better than nuisances, must be made,—what else, what better, Sir, can be done? If you are fed, must it not be against law? if you are clothed, must it not be against law? as if in one word *prohibition* were contained the united powers of capital, skill, and access to market! If you are instructed, no wonder, then, if this too must be against law.

Believe me, Sir, neither is the uncertainty I speak of in any degree a feigned one. I see what the present is: but, until the millstone, which the Committee, with but too much countenance from their colleagues, have suspended over your press, has either been set aside, or been let down upon it and crushed it,—I am unable to see, in any thing that is either past or present, any security for the future. Of the most comprehensive of those works of mine that are in French, the first volume, thanks to the zeal and talent of Mr. Toribio Nugnez, has been some time in Spanish: the others may, by this time, for aught I know, have followed it. True it is, that, to the functionaries, whoever they may be, whom the Legislation Committee looks to for giving execution and effect to its Code, I should not expect to find, that in my Penal Code, even with the *rationale* standing part of it, there is any thing that will give any heavier offence, than may have been given to them already by those works, or even than that which may come to be given to them by these present Letters. But, in this respect, the lot of this little work remains as yet in total darkness: and, supposing this darkness cleared away, and cleared away in my favour, still the like darkness would cover those so much more extensive and important future works. If I have not, in either instance, any assurance of proscription,—still, in that quarter, in neither instance, have I any thing like an assurance of toleration.

How is it possible, Sir, that I should? If, with the functionaries in question, matters for that purpose, are already, or shall have come to have been, arranged,—what man, whose misfortune it is to give publicity to any thing by which their displeasure shall have been called forth, can have any sufficiently grounded expectation of being suffered to live: not to speak of incarceration in its most hideous forms, and for never ending terms. *Subvertir, trastornar, alterar, embarazar, guardarse*—any one of those words, not to look for others, would it not be sufficient, Sir, for the fatal purpose?

True it is, that the *Gobierno* of the day, the septemvirate of Ministers,—if I may believe the official assurance of one of them, entertained,

not many months ago a desire to see these projected works of mine : a desire which they were accordingly pleased to make communication of to the King. But, besides that the offence, which I cannot but be too well assured cannot fail to be given by these letters of mine, had not then any existence,—the Gentlemen, of whom the government of that day was composed, have for some time been—what, in a few months, the Gentlemen of the Legislation Committee in question will be : and, under the proposed Articles in question, I see nothing that should prevent these my quondam honourable and official supporters, from being involved in that same fate, which, but for the circumstance of distance, might so naturally be mine.

True it is again, that for any such work there could not, I should suppose, be much to fear, supposing the circulation of these letters to remain unrepressed. But, unless it be from yourself, Sir,—for this, even in the present state of things, I cannot see any tolerably well-grounded assurance. How much less can I, under the proposed Code in question, if, in any thing like its present state, it shall have become law ?

Now then, Sir, comes a fresh vexation, which I know not how to avoid exposing you to : a request for answers, to a few unavoidably troublesome, and therefore sincerely reluctant questions. The uncertainty above spoken of, it being the cause and reason of them, will, I hope, be received as an excuse, or I have none.

Not to take, for the subject of the desired information, a work that as yet has no existence, I will take for a representative of it those Letters which have already given you so much trouble : and hereupon it is that I take the liberty of submitting to you the questions that here follow. To this work I might add those other tracts of mine on Spanish and Portuguese affairs, which in the original English have for some time been (as you inform me) in your hands,—were it not that, if this little work is tolerated, there can be no fear for either of those lesser ones.

1. Without special interference, on the part of yourself, Sir, or any other person in particular, is it your opinion that they will, or that they will not, be suffered to circulate unrestricted ? to be bought and sold freely, and all over the country, as books in general are ? and this without danger in any shape to any persons by whom, in any part of Spain, any part shall have been borne in the publication of them ?

2. If there be any such impediment to their diffusion, may I be warranted in any such hope, as that the influence of your declared opinion and wishes will be employed in the endeavour to remove it ?

One word more, Sir, and the experiment, so unexpectedly made upon your patience and power of forgiveness, is at an end.

Prepare yourself now, Sir, for what I am sure you cannot be accustomed to receive—and what I myself am as little accustomed to give as to receive—a menace. Menace as it is, it is however of that sort, a man's sensitiveness to which is—not in the inverse but in the direct *ratio*, of the elevation of the place he possesses in the scale of public estimation, and of the goodness of his title to possess it. It is

of that sort, or you would not have it to encounter, I believe, from any body, and I am sure not from me. Nor yet from me, but for the weakness of my position, would you be troubled with it.

That which, in my character of unretained but not the less zealous advocate of your nation; I have need of, so far as you are concerned, is—to see you at liberty: at real, and not merely apparent liberty. But, to a man in a situation such as yours, exposed to so much pressure in so many sinister directions, it is impossible to receive liberty but from some opposing pressure.

In the assembly of the deputies of the people you cannot take your seat, but encompassed by colleagues, from whom, in all varieties of form, you will hear this in substance—“Leave the intruding foreigner unnoticed. Let him write on at his peril. The constituted authorities will take charge of him: What is he to us? What need Spaniards care for foreigners? Let him remain unanswered. Least said is soonest mended. What a pity you thus noticed him! But this will be a lesson to you, and to all of us in future.”

In the midst of all this (for how guarded so ever the expression, you see the meaning that is at the bottom of it)—after such a warning from the highest but narrowest section of the tribunal of public opinion,—is it in the nature of the case, that a man in your situation should feel himself in possession of real and effective liberty?

Oh no! it is impossible. I see virtue struggling, but tottering. Now then for a support.

Where the desire exists to maintain a line of conduct, which, in the nature of the case, cannot but be in contrariety to the wills and opinions, to which a man is under the necessity of showing a certain deference,—a sense of superior duty presents not only a justifiable cause, but may frequently be found a convenient and allowed plea, for yielding to it; and thus, out of obligation, real or though but apparent, springs real liberty.

In the tribunal of public opinion—the only efficient guardian of political virtue—there are (I believe I have already made my bow to the superior of them) two grand sections. In your situation, on a thousand occasions, the suffrages of that *one* are irresistibly forced from the line of rectitude by the pressure of a swarm of particular interests. In the inferior and more numerous section, is the only steady seat of that virtue, which has for its object the greatest happiness of the greatest number.

At Paris, sits one of the most respectable committees of this multitudinous body. Paris, Sir, is not unknown to you: in Paris you behold, Sir, or report has been misled, a not altogether unattractive residence. ... “If I decline doing what is thus asked of me, what will Paris say to me?” This, Sir, is a question you need not be ashamed to put to any of your colleagues. Now then, Sir, for my menace—Return to Paris when you will,—these letters, in a French dress, will meet you there.

Now then, Sir, you are free: free to prefer public good to private considerations. Now, Sir, you stand at your ease, and armed. Receive

at length in form, the assurance of that respect, tokens of which, so much more demonstrative than any express declarations can be, have in no part of this long address (I stand persuaded) been found wanting, from

JEREMY BENTHAM,

To the Comte de Toreno, &c. &c. &c.

LETTER VII.

On Religion, and the Plan pursued in the proposed Code, for the support of it by death and other punishments.

RELIGION—*Catholic Religion*—*Pena de muerte*—Death (so says Article 230) death, the portion of every one, who, directly and by deed shall conspire to *establish* (*establicer*) in any part of Spain (*en las Espanas*) any religion other than the Catholic (Spanish Ultramarina included or not included :—I should expect to find it included.) *Establish?* What is *to establish?* A set of men who, in a house, appropriated or not appropriated to the purpose of religious worship, or let it be in open air, perform religious worship in a way of their own,—may not they, under this Article, by a willing Judge, without much difficulty, be killed for doing so?

On this subject, Sir, I should hardly have thought it worth while to trouble you with any observations on my part,—but for the words, by which, speaking of “*les Articles qui parlent sur la Religion*,” you encourage me with the assurance—“*cela ne passera pas*.” As to its being meant to apply to all these Articles without exception, this could scarcely, I think, have been your meaning: but, at any rate, I hope the prophecy will prove a true one, if applied, as I hope it was meant to be, to this same 230th Article. It being no more my intention to say any thing, either in this letter, or in any code of my drawing, against the Catholic Religion, than to run my head against a wall,—I find no difficulty, Sir, in submitting to you, in relation to this subject, a few scattered observations.

To every sincere and at the same time firm believer in the Christian Religion in general, and in the Catholic edition of it in particular,—it cannot, I think, but be matter of sad concern, to see the testimony of so many illustrious names, attached,—as in the Articles 230, 231, 232, 233, 234, 235, 236, and I know not how many besides, in the Chapter declared to be appropriated to that subject,—to any such declaration, as that, in their opinion, without support from temporal punishment inflicted on gainsayers, the belief in it would not be able to stand its ground.—Not stand its ground? Not in Spain? What should hinder it? In Ireland, as so many Irishmen settled in Spain can testify to you, it not only stands its ground, but gains ground: and that not only without support from oppression, but in spite of it.

“What?” (says somebody) “and, among all the sorts of acts, to which the Chapter on Religion seeks to apply prevention, and for the purpose of preventing punishment,—is there absolutely not any one to which, if it depended upon you, you would apply prevention, and even in some shape or other, punishment?” O yes, some there are unquestionably: namely, all those acts, by which, to human beings to an indefinite or other adequately large extent, I see any real evil,—in a word, any sensation of an uneasy nature, to a certain degree of intensity,—produced. Here, then, is a line drawn, which, if drawn on the proper plan, would be at any rate a tolerably plain and clear one. All exhibitions, which, being to the minds of individuals taken in any considerable number, productive of uneasiness on a religious account, are offered to their senses in such manner as that the unpleasant sensation produced by them, whatever it be, as unavoidable—all such acts are, in my view of the matter, objects calling for prevention by means of punishment; and, in this consideration, I cannot but approve of the principle acted on in Articles 237, 238, and 239 of the proposed Code.

Why? Because man is a being but too susceptible of uneasiness, and the more of it he can be saved from the better. But—the Almighty—is he a being susceptible of uneasiness in any shape? For my part, I cannot find any sufficient reason for believing him so to be: however, if on this point, the Cortes, by means of information received from those to whom it belongs to give it, have been more fortunate,—this point must be considered as settled. But, this point being supposed to be thus settled, then come two or three others. The Almighty being susceptible of uneasiness, and in particular of uneasiness produced by words employed by men, in speaking to or of him,—is it his almighty will to be saved from such uneasiness, or not? if yes, does he stand in need of any human power, and in particular of that of the Cortes, to give effect to such his will? if, on the contrary, it is his almighty will *not* to be saved from such uneasiness, but to continue suffering under it, does it become the Cortes to endeavour to oppose their power to such his almighty will? and if yes, does such opposition afford any considerable promise of proving effectual? Corresponding questions, in regard to the Saints; to whom also, meaning doubtless the departed Saints, the protection provided for the Almighty is, in Article 237, (I perceive,) extended. Having ventured so far as to submit to your view these questions, the answers I must be content to leave, which I do without reluctance, to the competent authorities.

These things considered—“*blasphemies*,” or “*imprecations*,” (Article 237,) or whatever else be the denomination given, to portions of discourse, by which, with or without production of uneasiness, offence has been supposed to be given to God, or to the Saints, or to both,—so long as they are confined to writing or printed books,—or to private conferences, not open to the public at large, into which he, to whom what is said is productive of uneasiness, entered of his own free choice, without being obliged to repair thither in prosecution of any matter of business;—to no such discourses, how revolting so ever to

myself, could I, if it depended on me, think of applying punishment in any shape. But, in a promiscuous multitude,—in a church suppose, a judicatory, or any other public building, or in a road or market-place, or a ship,—suppose such language uttered, uneasiness to *men* may be produced, and with it demand for punishment.

Whatsoever may be the justice—with which the above observations may be found to apply to offensive *audible* exhibitions,—with correspondent justice they will, I think, be found to apply to *visible* exhibitions : it matters not through what sense the wound passes to the mind, if the mind is wounded.

Whatever difficulty may have been produced in Gentlemen's minds, by offences styled offences *against* Religion, considered as commissible by individuals at large,—it is but a small matter (I should suppose) in comparison of that produced by offences *through* Religion : offences apprehended at the hands of that particular order of men, in whom, among you, the votaries of religion are wont to behold its special and little less than exclusively authorized guardians.

As to myself,—reference always made to the greatest happiness of the greatest number,—I beheld as issuing from this source two widely different mischiefs : the one *temporary* in its nature, the other *permanent*. 1. By the temporary mischief I mean—that which consists in opposition made by this particular class of functionaries, to the government composed of all the other classes of functionaries : a mischief, which, to the greatest number of the people, is great, in proportion as the conduct of the present government is, in a higher degree than that of the late, conducive to that same greatest happiness. 2. The permanent mischief is—that which I apprehend, from the junction of the body of the sacred functionaries with the profane ones : the junction, of the two particular interests of these two sections of the ruling few, into a body of particular and thence sinister interest, which will thereby be so much the more effectually enabled,—as, if the body be composed of men, it cannot but be as surely disposed,—to sacrifice, to its own supposed greater happiness, the greatest happiness of the greatest number :—or, if *interest* be the word, the universal interest.

Supposing the old government to continue unrestored,—the temporary mischief, as above described, will be growing less and less every day, as the functionaries established under the old government drop off, and as the public mind grows more and more enlightened. In corresponding proportion will the permanent mischief take its place ; and, when it has once swallowed up its present opponent the temporary mischief,—will remain in possession of the field, without any thing, unless it be the spirit of the people, to oppose it. In a word, the temporary mischief is—superstitious influence : the permanent mischief, corruptive influence.

In the temporary mischief I see nothing very formidable : nothing but what, under the constitution as it stands, may admit of a remedy : an easy, a gentle, and an effectual remedy. This remedy, Sir, I shall proceed to submit to you : and with the less diffidence, considering

how near on some points it comes to that which I see employed by the Committee.

For conciseness I shall put it into a form in some respects similar to what I should pursue in the penning of the correspondent part of a Code. But, I must beg of you not to consider it, as any thing like an adequate sample of such a Code. To give to it any thing like the precision and conciseness, that would be given to it in a regular work of that kind of which it would form a part, is altogether impossible. In any such fabric of my construction, the form of each part would be dependent on that of every other.

General description of the proposed remedy.

1. With the exception of ecclesiastical functionaries in general, and bishops in particular, addressing themselves in print or writing to the people within the range of their authority, in the exercise of their official functions,—leave to persons of all descriptions—ecclesiastics of all classes as well as others—the complete liberty of publishing whatsoever they please on the subject of religion: without exposure to punishment in any shape, or impediment to the circulation of such their discourses. N.B. Such,—only without the exception,—is the state of the law in the Anglo-American United States: and no mischief in any shape,—no such mischief as that of oppression by government, or disaffection towards rulers, or discord as between citizen and citizen through the instrumentality of religion,—is produced by it, or has place there.

2. On the part of an ecclesiastical functionary of whatever class, let the publication of any instrument,—on the face, or on the occasion, of which, either by his proper name or the name of his function, he stands designated, either as sole author, or partaker in the authorship or publication, of such instrument,—designated whether in the direct way, or in any way howsoever indirect,—stand interdicted: unless and until it shall have received a license in writing, under the hand of a functionary of the temporal class:—say the political chief of the province.

In this case,—though the composition of the instrument is, as consistently with the religion in question it cannot but be, the sole act of the ecclesiastical functionary,—yet the publication of it may be considered as the joint act of the ecclesiastical functionary and the temporal: or a relative censorship may be considered as established, with the temporal functionary for censor. The operation is the same, in whichever light considered.

N.B. To this purpose must be considered—not beneficed ecclesiastics only, but all ecclesiastics whatsoever, regular as well as secular. For, it is—not only from special power or dignity, but from the sacred character common to them all, that their influence is, in the instance of each, wont to be derived. Coextensive is the designation employed in the proposed Code, Article 213.

1. *Reasons for the general liberty.*

1. Against vexation to the feelings of individuals, security will be

sufficiently afforded, by the above proposed interdiction, of discourse, visible as well as audible, and of all other objects of an anti-religious nature, if exhibited in any such manner as to be open, to eyes to which they are disagreeable.

2. Against mischief by the propagation of mischievous errors, security will be afforded, by the unbounded faculty of refutation, left to all persons in whose eyes they possess that quality: and, of inducement adequate to the production of such refutation, in so far as the nature of the case admits of refutation, no deficiency can reasonably be apprehended: if there were any, nothing could be easier to government, than the providing an adequate supply to it. See the Tract on the Liberty of the Press, and Public Discussion.

3. Any fear, real or pretended, of seeing the will of the Almighty, in this or any other particular, overpowered and frustrated by human agency, is too palpably self-contradictory and absurd, to be defensible:—or to be accounted for, otherwise than by long-continued custom produced in its origin by the union of force and fraud, with or without superstitious terror.

4 Of the fear of seeing the will of the Almighty frustrated, in the particular instance of the existence and extent of the religion of Jesus,—the groundlessness is moreover demonstrated by experience, in the case of the Anglo-American United States.

5. Of the fear of seeing the will of the Almighty frustrated, in the still more particular instance of the existence and extent of the Catholic edition of the religion of Jesus,—the groundlessness is moreover further demonstrated by experience, in the case of *Ireland*, as noticed in a former Letter.

II. *Reasons, against every such attempt, as that of designating, for the purpose of punishment, the sort of supposed mischievous discourse, meant to be interdicted on the score of opposition to the existing government, on the part of ecclesiastical functionaries, speaking as such.*

1. Such designation is, as to a part of the extent, *needless*. In so far as such discourse has for its immediate tendency to engage men in the commission of acts injurious to person or property,—the offence is met by the laws applying to such offences, taken in their utmost latitude.

2. As to the rest of the extent, it is *impossible*. The above case excepted,—it is not possible to reach by any description, the sort of discourses in question, when emanating or appearing to emanate, from any person invested with the consecrated character. Out of phrases, extracted either from the Fathers, or even from the Bible,—in a word, from any writings, whatever they may be, which in the religion in question are held as sacred,—out of phrases thus extracted, may be composed, by any one who shall think it worth his while, a *cento*, abundantly sufficient for any such mischievous purposes. Of the portions of discourse thus extracted and employed, the application thus made will be a misapplication. True: but the source from whence

they were extracted will not have been the less sacred. Too great to be contended against, will be the difficulty of passing condemnation, on matter extracted from such sacred sources,—when *seen*, or believed to be, extracted by such consecrated hands.

3. Uniform conviction will be hopeless. Howsoever, in such a case, a judge, zealous to a certain degree on the side of the existing rulers, may be disposed to pronounce conviction,—a judge, inwardly hostile or less zealous, can scarcely be punished for not doing so. Such (says the obnoxious ecclesiastical functionary to the judge) is the interpretation put by me: if my interpretation is erroneous, does it belong to you—not only to put an opposite interpretation upon the sacred text, but to punish me, only because mine is different from yours? Then comes the judge and says to his superiors, Can you punish me, layman as I am, for not punishing, on the ground of its being a misinterpretation, an interpretation put by a consecrated person on these sacred texts?

As to the particular restraint,—note, in the first place, the assumption on which the demand for it is grounded: it is—that, from the class of persons in question, under existing circumstances, hostility to the new order of things is naturally to be apprehended.

Grounds for the assumption are these: viz.

1. Hostility, from this quarter, has actually been manifested to a very considerable extent.

2. It is but natural, and even, morally speaking, excusable,—that, having been admitted into their respective functions when the former order of things was in force,—they should, by sense of duty, and thence by reflection, as well as by particular self-regarding interest, be attached to it, and led to give support to it.

III. *Reasons for the restraint.*

1. Addition of what is wanting, to the perfect freedom of discussion, which, by the supposition, was meant to be established by the general provision relative to this subject. The power,—exercised over the judgement of the people at large, by means of the fears, derived from the source in question, and infused into their breasts,—is a power by which inward freedom of consideration is liable so stand excluded, and the mind to be rendered insensible to the force of argument on the other side.

2. From the freedom of discussion, no defalcation is thus made. Not even on the part of these functionaries themselves: since, for the giving support to their opinion, it leaves to them whatever liberty is possessed by any other citizen. They may give currency to whatever arguments they please, so as they do not make it known from what privileged source they come: the arguments will then operate with whatever rational force properly belongs to them, and no more.

3. *Exclusion of useless punishment.* If punishment were ordained to be applied to all such discourse, as, emanating from the quarter in question, shall, according to a description given of it, be deemed mischievous, it might, under the uncertainties above mentioned, come

to be now and then inflicted. This punishment, being upon the whole inefficacious, would be useless, and expended in waste : evil, produced without preponderant good.

Look, on the other hand, to the case, where the offence to which the punishment is applied, is the offence of publishing without the required license. In this case, the fact is so easily ascertainable, and so completely unexposed to dispute, that, by a presumption by no means unreasonable, it may be assumed that the offence will scarce ever be committed. If the instrument is not regarded as coming from the ecclesiastical functionary in question, it is not productive of the mischievous effect apprehended : as little is it, if, on being interrogated whether it has his sanction, he denies it :—if, on the other hand, he avers that it *has* his sanction, in this case, having by the supposition no license to produce, he plainly incurs the punishment. Under these circumstances, how small the probability is that a man should thus expose himself, is manifest.

True it is,—that, by this restriction, confined as it necessarily is to discourse in a written state, mischievous discourse from the quarter in question, not uttered otherwise than by word of mouth, is not reached. But,

1. For the repression of all *actual* mischief—all mischief in a tangible shape—all mischief, which is any thing more than mischief in *tendency*—all mischief, in a word, which has for its subject matter either *person* or *property*,—provision is made, by the general and standing laws, by which, acts mischievous to person or property are erected into offences, and, as such, made punishable.

2. The mischievous discourse in question being, by the supposition, not committed to writing,—the effect of it will be proportionately uncertain and transient.

3. In so far as any reports made of the purport of it find their way into print,—they will have to encounter the arguments, which,—on the side, that, by the supposition, is not only the right side, but the side which has the remuneratory power of government for its support,—cannot, as above shown, be reasonably expected to be deficient : and as, by the supposition, the mischievous matter will not be avowed by the functionary from whom it is reported to have come, they will not operate with more than their proper and reasonable force.

IV. *Punishment, proposed for promulgation without such license.*

1. Banishment, for a term to be limited, from every part of the Spanish territory.

2. Forfeiture of all ecclesiastical benefices situated within the Spanish territory. *i. e.* Of the temporalities thereto belonging. N. B. If, by the ecclesiastical law recognised in Spain, any difficulty be opposed to such forfeiture,—for example, a difficulty as to the separation of the temporalities from the spiritualities,—this point will require to be settled.

3. In case of damage, produced to person or property, by means of any incitement, regarded as having been given by the unlicensed instrument,—obligation to make compensation for the injury,

Reason for article 1 of the Punishment.

Power of reoffending cut off in part.

Reason for article 2 of the Punishment.

Power of reoffending cut off in other part.

Reasons for article 3 of the Punishment.

1. The justice of the arrangement manifest to all eyes. N.B. But this supposes, that the connexion,—between the publication of the unlicensed instrument and the physical damage in question,—in the character of cause and effect, has been sufficiently ascertained.

2. Assistance necessary to the law more effectually secured : secured, on the part of the persons, whose subserviency is necessary to the execution of it : necessary—in the several characters of witnesses, and informers or prosecutors.

N.B. Capital punishment makes martyrs : a martyr may be more mischievous after death than during life. Neither by banishment,—nor by forfeiture of the ill bestowed invitations to idleness and anti-christian luxury,—nor by obligation of making amends for injury,—nor by all together,—is any such instrument of good or evil as *a martyr* manufactured.

V. *Punishment for the Political Chief, in case of his giving a license to an instrument of the sort in question, which, in respect of the mischievous tendency imputed to it, shall have been deemed unfit to receive a license.*

In case of actual damage produced to person or property,—obligation to make compensation :—as in the case of the ecclesiastical functionary, as above.

N.B. If, in the case in which no such damage has been produced, it be thought fit to apply punishment to the case of the temporal licensing functionary,—a description of the nature of the offence, committed by the improperly licensed spiritual functionary, will require to be given : a description, the difficulty of which has been above brought to view. But, in comparison of the peril that has place in the case of the improperly licensed spiritual functionary,—the utmost peril, that can have place in the case of the licensing temporal functionary, is very inconsiderable. The inducement, by which a person in the situation of the ecclesiastical creature of the former government is naturally stimulated to the commission of the offence,—has no place in the situation of the temporal creature of the new government by which the former government has been supplanted. Whatever therefore be the description given of the offence,—very inconsiderable is the probability, of its being, in any such situation as that of the temporal functionary in question, ever committed.

Suppose even that, in the text of the law, no penalty is attached to the supposed mischievous conduct in question, on the part of the temporal functionary,—even in this case, the requisite means of repression will scarcely fail of being applied. For this purpose, the power of removal, belonging to the superiors in the executive department, might, it should seem, suffice.

VI. *Punishment for the Political Chief, in the case of his refusing a license to an instrument of the sort in question, to which it is thought a license ought not to have been refused by him.*

In this case, there seems not to be any adequate demand for punishment. The situation in question would be too perilous,—if, for two offences of an opposite nature,—one of them so difficultly susceptible of precise description—punishment were thus menacing a man on both sides.

To put an extreme case. Suppose the result to be—that, from the quarter in question, no written instrument of the sort in question ever emanates. The greatest possible evil that could result from such deficiency does not present itself as very serious. From the same quarter there would remain, in unlimited quantity, in the oral form, instructions to any effect wished to be communicated, and in the written form, instructions equally unlimited, so it be in an anonymous state:—in that state, in which it will carry with it, no more indeed than the weight, but yet all the weight, that properly belongs to it.

VII. *Reason for the proposed temporariness of the restriction.*

1. Restriction, howsoever applied, being so much evil,—ought not to stand applied, but in so far as it has the effect of excluding evil to a greater amount. For the exclusion of the evil in question, the most perfectly effectual course would be—to continue the restriction so long as any one functionary, admitted into the order in question under the former state of things, continued alive. But, were the duration given to it thus protracted, the restriction would continue long after the need of it had ceased to exist. Threescore, or as far as fourscore years, might be the duration of it. Even supposing unabated hostility sure in the instance of every one of them,—it is not by one, nor by a small number, that in this way any considerable mischief would be produced. In a torch, though lighted, there is nothing dangerous,—except in so far as combustible matter, in a quantity sufficient for mischievous effect, is within reach of it. Say then in ten, say in twenty—say at the utmost in thirty years,—with the hope, even the desire, of producing mischief in this shape, it seems reasonable to believe, would be effectually extinguished: if not in all, at any rate in so large a proportion of the whole number, as to leave the rest in a state of sufficient impotence.

I was about to speak, somewhat at large, upon the *permanent* mischief, in regard to which gentlemen of the Committee are so much at their ease, and your humble servant so full of apprehension: I had even written more than as much again as, on the conclusion of this Letter, you will now have been troubled with. What has saved you is—the recollection, that, in the composition of the mischief in question, the mass of the matter of corruptive influence in the hands of the clergy is but one element out of a number: and that therefore, under the head of Religion, discussions on this subject would not have their proper place.

I will not attempt, Sir, to take up any more of your time, by offer-

ing to your view the points of difference and the points of agreement—for points of agreement on this subject there are—between your Honourable Colleagues, and your troublesome correspondent. There would be no use in it: and, when confronted, the passages will, I hope, speak sufficiently for themselves.

By one thing or other, I have thus been insensibly led, to the obtruding upon you, as it were by a side wind, something like a sample, of the manner, in which,—in a Code furnished with a *rationale*,—the principle of the greatest happiness of the greatest number, would be applied to the several particular cases: the several elementary ingredients of the great compound—I mean the probable feelings of all individuals concerned—being, to the best of the operator's ability, looked out for, set down, numbered up, weighed and measured. Inadequate in a lamentable degree must unavoidably be any such sample. In an entire work of this kind, constructed in pursuance of an uniform design, that degree of condensation is practicable, which in any part taken by itself is impossible: condensation—a quality in this case so indispensable—to precision, comprehensiveness, and consistency, as well as notification. On the same subject,—you and your honourable colleagues, Sir, have before you a work, of which, in this place, I need say no more, than that, compared with their proposed Code, it is a different one. The eyes of “cultivated Europe”—Yes, and of the so much better cultivated America—not to speak of that which is beginning to be cultivated—are fixt upon you. You will make your choice. And now at length, Sir, a period is put, to the course of continually increasing vexation,—which, by the philanthropic and spontaneous zeal of a common friend, has,—such have all along been my apprehensions,—been unawares imposed upon you, at the hands of

Your not the less sincerely respectful correspondent,

JEREMY BENTHAM.

☞ The following paragraph was, by accident, omitted out of Letter V. p. 56. It should have come in immediately after the fourth paragraph.

Bonaparte and his draughtsmen saw in every *Regicide* a *parricide*. A more convenient vision has been seldom seen. In this same vision, the gentlemen in question (I see) have been partakers. And so—to beget and to kill, to feed and to exhaust, to clothe and to strip, to love and to despise, are one and the same thing. Bonaparte—O “most puissant Prince!”—Bonaparte, upon looking round h'm, found he had begotten all whom he had left unslaughtered. Thus it is that Rhetoric—O ever ready prostitute!—prostitutes herself to despotism.

SUPPLEMENTAL ADVERTISEMENT.

IN the preceding Advertisement, some account was undertaken to be given of the effect of these Letters, so far as regards the honourable gentleman at whose instance they were written, and the other honourable gentleman who has been seen bearing a principal part in the drawing up and ushering in the important work which has been the subject of them.

Letter after letter went, and no acknowledgement came of the receipt of them. The Count's residence at Paris being but temporary, and no address having been given to me, the course I had taken was—after directing the letters *To Count Toreno at Paris*, to add in French, *TO THE CARE OF the Spanish Mission*. At this time, fortune favoured me so far, as to station at Paris, a correspondent on whose punctuality I could depend:—Miss Frances Wright, author of that so justly admired and preeminently interesting work—*View of Society and Manners in the American United States*, a second edition of which has, at the end of a few months, just succeeded the first. At my request, that lady did me the favour to see the Count, and deliver into his hands, a letter of which the following is a copy.

Mr. Bentham to the Comte de Toreno.

Queen's Square Place, Westminster, Sept. 18th, 1821

SIR,

This goes to you, I hope, by a private hand. In obedience to your commands, as signified by your letter of last month, and in consequence of your obliging present received on the 22d, I addressed to you by the post on the 11th of this month, the first of six intended letters, and on the 14th, the greater part of the second: the conclusion of the second I shall send this night by the post, not being able to finish the revision of it time enough to send it by the present private conveyance. The third and fourth will follow it in a very few days more. In the

first or second of these letters, reference is made to two pamphlets, which Miss Wright, a young lady who was going from hence on a visit to General La Fayette, was kind enough to take charge of. It would be a great satisfaction to me to hear that any thing of all this has been received by you, *as likewise to receive your directions respecting the course to be taken for the conveyance of the remaining letters* *. Your letter to me not containing any directions on this subject, nor being dated from any street or other place at Paris, I could think of no course so proper, or so likely to succeed, as that which is expressed in the direction given to this letter, and which direction I have accordingly pursued in every instance. To Miss Wright, I gave in charge nothing more than the pamphlets in question, not having at that time been able to decide what course my letter to you should take. Understanding that the Cortes were to meet to do business so soon as the 24th of this month, I should not have sent a letter to you at Paris thus late in the month, but for those words in which you say in your letter “d’ici aux derniers jours de Septembre, que je dois retourner en Espagne.”

With the truest respect, I am, Sir, Yours,

JEREMY BENTHAM.

Under these circumstances I could not help considering myself as being in no inconsiderable degree indebted to Miss Wright for the Spanish letter underneath, of which the following is a translation.

Paris, September 26th 1821.

SIR,

Perceiving from the quotations in your three valuable letters, the acquaintance you have with the language of the nation I belong to, I employ it on this occasion, in preference to any foreign one; following in this particular the example you have set me. Never should I have thought of making any such attempt upon your time, had it not been for my friend Mr. Bowring, and the assurances he gave me, that you would with pleasure do whatever it might lie in your power to do, in compliance with any request, which, for a purpose such as that in question, I might be disposed to make to you. Under this assurance, it seemed to me that I could not have a more favourable occasion, for addressing myself to the illustrious writer, the celebrated Mr. Bentham,

* This satisfaction I was not destined to receive.

whose works have spread so much light over the field of legislation, and thereby made such large contribution to the welfare of mankind.

I see, however, that the extent of the subject, and, above all, a sort of distrust on your part as towards the functionaries who consult you, have given their colour to your mode of complying with my request; although it does not appear to me that "the individual thus 'consulted'" should have seen grounds for distrusting "the functionary consulting."

The latter of these will, with pleasure, quote with due respect the person by whom he is thus honoured: it accords not with his principles or his habits to attempt to gain reputation by hiding, diminishing, or appropriating to himself the merits of other men. With that urbanity which from such a quarter could not but be expected, it has been your care to avoid including me in any such imputation: I mean, by the testimony you give to the fact, that I have not the honour of knowing or being known to you, or of ever having written to you: by this testimony, coupled with the intimation of your opinion, that there was nothing about me that could have given room for any such particular distrust on your part towards myself. Be assured, Sir, that I am duly sensible to the value of the expectations you hold out to me, of your having in hand a work on this same subject. Not less so am I to the justice of those already published observations of yours, of which certain articles in our constitution are the subjects, confirmed as it is to me, by those which a pretty extensive course of experience has led me to make on the practice of legislative bodies. The non-re-eligibility of deputies is a most serious evil; detrimental, as it so manifestly is, to that stability and consistency which are so essential in men's proceedings in general, and more particularly in such in which the public interest is concerned. Although my first letter was not written under any such expectation as that of its meeting the public eye, you have not the less my free consent, Sir, to send it to the press, so as the present letter be an accompaniment to it.

It is with great pleasure that I shall always receive any such communications as you may be pleased to make to me: persuaded as I am, that whatsoever labour may have been employed upon them will not be labour lost.

I am, Sir, &c.

(Signed) EL CONDE DE TORENO.

P. S. Miss Wright has the goodness to take charge of this letter for you.

Mr. J. Bentham.

Paris, Septembre 26, de 1821.

MUI SEÑOR MIO,

Viendo por las citas que VMd hace en sus tres apreciables, lo bien que entiende el espanôl; prefiero escribirle en mi lengua à valermé de otra extraña, siguiendo en esto el exemplo de VMd. Nunca hubiera yo molestado su atencion, ni atrevidome à distraerle de sus importantes tareas, si nuestro amigo Mr. Bowring no me hubiera animado à ello, manifestandome el gusto conque VMd satisfaria mis deseos—En virtud de esto nada creí mas oportuno en el asunto de que se trataba que dirigirme al scritor illustre, al célebre Mr. Bentham, que por medio de sus obras habia procurado en materias de legislacion difundir ideas luminosas y contribuir de este modo al bien de la humanidad—Veo sinembargo que lo extenso del asunto, y sobre todo un cierto género de desconfianza que tiene VMd en los funcionarios que consultar, le han impedido contestar à lo que le preguntaba, si bien nada hubiera tenido que recelar del *functionary consulting the individual thus consulted*. El primero citará con gusto la persona que le ilustre, ne fundando su gloria en ocultar, disminuir, ó quitar, el mérito de las demas—VMd con la urbanidad propia de hombre tan distinguido, no me comprehende en su asercion; y en verdad no habiendo tenido la honra de conocer antes à VMd, ni de escribirle directamente, como VMd mismo nota, no habia antecedente alguno que diese lugar à esta desconfianza.

Aprecio de todos modos la promesa que VMd me hace de una obra que acerca de esta materia escribe.—Asimismo estimo las observaciones generales sobre algunos articulos de la constitucion; entre ellas hallo algunas bastante justas, segun lo que me ha enseñado una larga experiencia de lo que son los cuerpos legislativos—La no-reeleccion de diputados es un grave mal, pues falta aquel principio de estabilidad y consecuencia tan necesario en todos los asuntos, y sobre todo en los de publico interes.

Aunque mi primera carta no fué escrita con el obgeto de que viese la luz publica, es VMd mui dueño de imprimir la con tal que imprima igualmente esta que ahora le escribo.

Tendré siempre mucho gusto en recibir las observaciones que tenga VMd à bien comunicarme; y estando seguro de que no seran sin fruto me ofrezco de VMd atº segº servº L. B. S. M.

EL CONDE DE TORENO.

Miss Wright tiene la bondad de diriger à VMd esta carta.

No other acknowledgement, nor any further instruction arriving,—on the 11th of October, I sent for Madrid by the post the following Letter, directed “A Monsieur M. le Comte de Toreno, &c. &c. &c. Madrid.”

Madrid, Oct. 11, 1821.

A Monsieur M. Le Comte de Toreno, &c. &c. &c.

SIR,

Circumstances considered, it seems to me that there may be a use, in my making this second acknowledgement of the honour done me by your second letter bearing date, Paris, Sep. 26. The first acknowledgement was made in a postscript to letter the 4th, being the 3rd of the series of letters announced in letter 1st. Whether, besides that 1st letter, you had, before your leaving Paris, received any others, I cannot be sure: though, from a passage in your abovementioned 2d letter, I am inclined to think you had received one at least*: of the 6 sent or announced as above, 4 have already gone to Paris at different times, all of them directed in the same words as the one of which you mentioned the receipt: so likewise a part of letter the 5th. The whole, or near the whole, of the remainder, will go to-morrow (Friday); letter 9th, which at present at least is but a short one, will follow it the next Paris post day, which is Tuesday Oct. 16: and, the same day or the next, the supplemental letter on Religion (letter 7th) announced in one of the preceding ones.

I am, Sir,

With all respect,

Your obedient servant,

JEREMY BENTHAM.

P.S. The following are the days on which the several letters were sent to our London Post Office.

1821. Sept. 11th, Letter 1.

Sept. 14th, Letter 2 (first part).

Sept. 18th, Letter 2 (last part).

Sept. 27th, Letter 3.

Oct. 2d, Letter 4.

Oct. 15th, Letter 5. (first part).

Oct. 10th, Letter 5. (last part).

* This doubt was a misconception of mine: the Count's Spanish Letter acknowledges three.

The honourable gentleman speaks of distrust: of distrust on my part: and, as in his situation would very naturally be the case, seems to be not altogether pleased with it. Distrust on my part? O yes: *that* there was: distrust, not entertained only but declared: the reader may have observed how explicitly declared. It is for this distrust that I see a sort of *action* brought against me in the *Court of Public Opinion*: though, such is the honourable plaintiff's candour, I cannot complain of the rate at which the damages appear to be laid. To this action, such as it is, my pleas are—in the language of English law—*Not guilty*, and a *justification*. 1. Not guilty. For,—the object of this distrust of mine—what is it? Not the individual, but the genus and the species:—*man*, the genus; *statesman*, the species: and, such as the imputation is, we are—both of us—not he the plaintiff alone, but I the defendant also—declaredly included in it. I will even go further—I aver even *ultrà-innocence*. If, on my part, in a case like this, the eye of suspicion could have been closed, in few instances could it have been so nearly so, as in the present. I turned in the first place to the Cortes at large. In the instance of these real representatives of the Spanish people, when compared with the sham representatives of this and that other nation, I could not but see a ground for comparative confidence—appropriate confidence—a ground alike obvious and incontestable. In the instance of Count Toreno in particular, this ground presented an aspect of peculiar strength. Him alone I saw breaking through the trammels of national vanity, and national prejudice. Him alone I saw looking round for useful information: looking to whatsoever quarter presented a chance of furnishing it. To whatever presumed source of information the call for it had been directed, the magnanimity manifested by such a call would have produced, in my mind, that degree of appropriate confidence which was so natural: and whether, by the consideration of the individual source applied to, that confidence could have been lessened, any one may judge.

So much for *not guilty*. Now for *justification*.—Suppression—suppression, to an amount more or less considerable—is charged, as having, in the passages complained of, been stated, as an undesirable, but at the same time a too certain result,—supposing the correspondence not submitted to the public eye. Such then being the alleged probable, what has been the actual, result? This security against suppression—such security as is afforded by the assurance of future publication—this security, as far as it goes, has been obtained;

and still, so far as has depended on the honourable complainant, suppression has actually been the result: suppression, not partial only, but total, in the only place in which publicity could have been productive of any immediate effect on practice. Of the seven letters which the reader has before him, *three* (he has seen) have been acknowledged. But he has moreover seen—how and by what means they were caused to be acknowledged: fortune having, in the manner that has been seen, favoured me, and conveyed through the Count's key-hole, a sylph, to whose questions a *yes* or a *no* could not be refused. It is moreover to her account that my suspicion cannot forbear placing that same license, whereby publication stands authorized. Since that day, (Sept. 26th, 1821,) neither in black and white, nor by word of mouth, has a syllable from him on the subject been extractible. The letter, with which he was presented, or at least endeavoured to be presented, upon his return to Madrid, the reader has seen likewise. Mr. Bowring, by another such favour of fortune, was sent to meet him there. Have you seen the Count? What has he received? What says he to it? To questions to this effect, put by me to my friend, an answer could not be refused. One alone could be given—*Invisible*. Invisible? How so? unless that, by the Count, my good genius, though so lately his own likewise, was now taken for his evil genius?

Thus it is, that, in the case in question, while all use to the Spanish nation was dependent upon and proportioned to publicity,—on the one part has been seen exertion for the securing of it, on the other part silence and secrecy, continuing from beginning to end.

In letter sixth, may have been observed two concluding questions put to the Count. 1. Think you, Sir, that, without any interposition on your part, circulation will be permitted to these letters? 2. If not, will your influence be employed in the endeavour to procure a permit, or at least a connivance, for the article you have been pleased to bespeak of me? Still, for answer, silence: and in such a case, silence (it need scarce be said) is a negative. Now as to the effect of this same negative. Nor yet, if report be to be credited, is silence on his own part the only instrument of suppression my honourable correspondent has at his command. In Madrid, as elsewhere, sits a Board, for the securing of whatsoever requires to be secured, in relation to the press: on the part of all constituted authorities, good conduct, at all times, and in every shape: and for this purpose—for there, as elsewhere, such is the means employed—concealment of every

such instance of bad conduct, as may at any time have had place. For a gilding to the pill, here as elsewhere, *Jury*, if I mistake not, is the title conferred upon this Board. At Madrid, report gives to Count Toreno the direction of this instrument: and such is the hold taken upon men's minds by this apprehension, I am assured that, should it happen to any of these letters to make their appearance at that chief seat of Spanish liberty, amendments adapted to existing circumstances must and will, in the first place, have been made in them: so that, to an extent more or less considerable, what I am thus seen to have said will be—not what I *have* said, but what I *ought* to have said.

All this while, let not injustice be done, in any shape, to my honourable correspondent. On nothing which he has done or left undone, is any breach of promise chargeable. What he promised, was—that he would *himself* pay attention to what he received from me: what he did *not* promise, was—that any one else should have it in his power to do so.

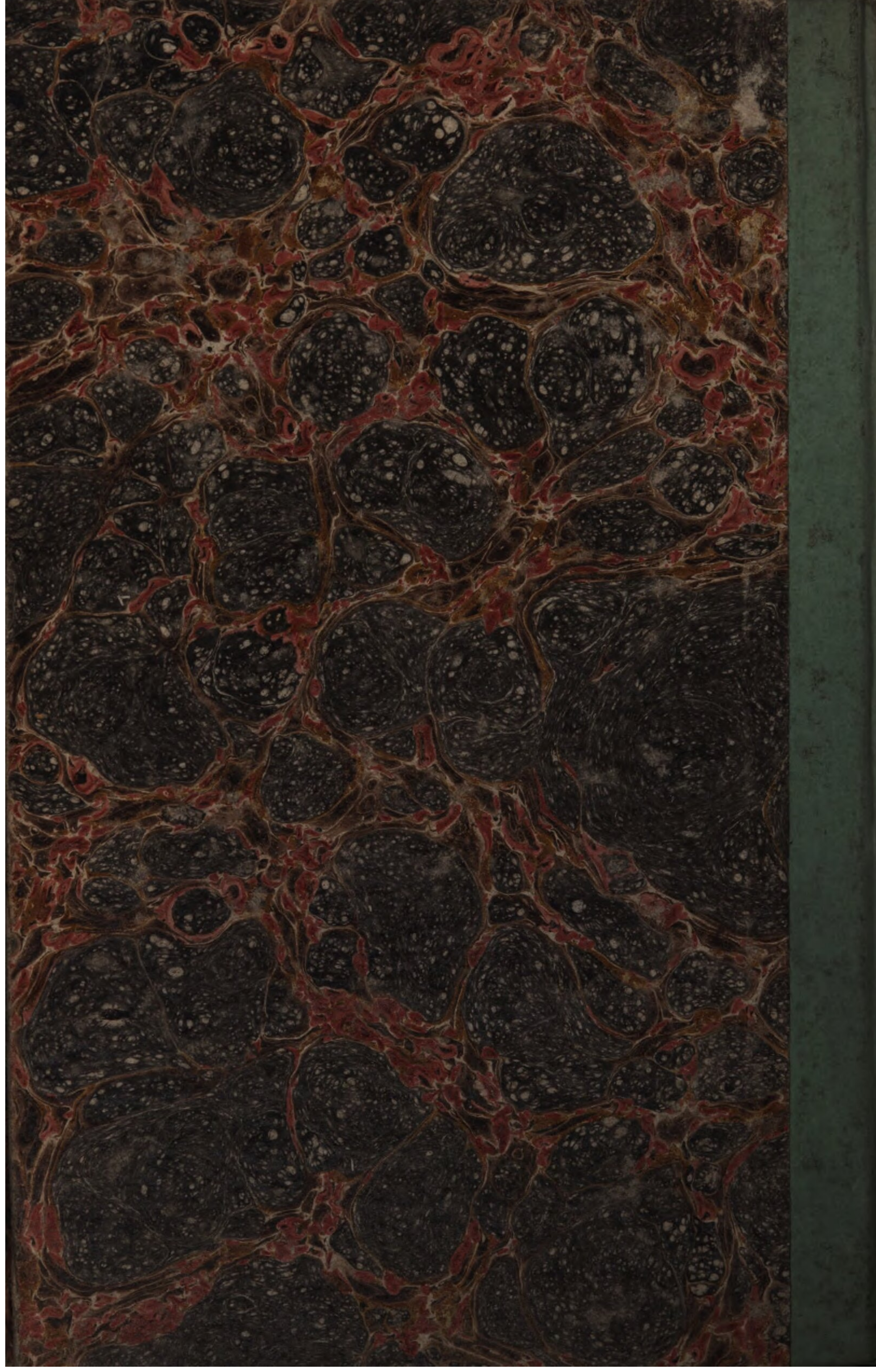
Curious enough, unless my information is substantially incorrect, is the contrast exhibited by the effect of these Letters on the two most conspicuous characters in the Cortes,—Count Toreno, and M. Calatrava: that Mr. Calatrava, who, on the occasions of greatest importance, has been seen taking the lead. “Yesterday,” (says a private Madrid letter of Dec. 17,) “Yesterday, Calatrava made, I am told, “a most eloquent eulogium on ‘the illustrious, the learned, the *humane* Bentham.’” How different this result from any thing that could naturally have been expected! In the case of my honourable correspondent, gratitude for the distinction conferred on me, added to esteem for the liberality manifested by an application such as hath been seen, could not but concur in giving a certain smoothness to every passage, by which, in the course of the discussion, his individuality was brought to view. In the case of the chief penman of the Projected Code,—after every smoothing-iron that presented itself had been employed, necessity still gave to every thing an irremediable asperity. Far indeed from pleasant to the author of the Letters was the invidious office, which, as the work advanced, after the promise of it had been made, the nature of the case was seen to have forced upon him: the office of *mischief-maker* between two colleagues. Never accordingly was sympathy more sincere than was mine, as often as the predicament, in which the two great statesmen had been placed by me, offered itself to my view. But, on the one hand, on a point of the most extensive influence, stood the interest of the whole Spanish nation:

not to speak of so many other nations in the back-ground : on the other hand, the transient feelings, of two individuals, whose situations could not but be frequently exposing them to similar ones.

As to Mr. Calatrava's knowledge of the treatment he had been receiving at my hands,—it is scarce necessary to observe, that, while Count Toreno was sitting at his elbow, and it was known to other members of the Cortes that a Spanish translation was in hand, few things could be less improbable, than that any thing which the honourable gentleman was disposed to know of the matter, should be unknown to him. The more than friendly language, in which, as above, the author of the provocation was spoken of—spoken of by him who was the object of it—should be present to the reader's mind, as often as any of the particulars, by which the provocation was given, present themselves to his eye or to his memory. Yet have I seen a letter (it was indeed from a fellow countryman of his, and a declared adversary) in which this forgiving statesman is charged with being of the number of those, who do not bear their faculties altogether so meekly as could be wished. Magnanimity—prudence in this or that shape—to which of these two virtues, or to a happy mixture of both, shall so rare and exemplary a return of good for evil be ascribed ? To the Hermit at London in his hermitage, all this matter is perfectly opaque : at Madrid, it is perhaps transparent.

R. AND A. TAYLOR, PRINTERS, SHOE-LANE, LONDON.





Bentham, Jeremy,

Letters to count Toreno on the proposed penal code delivered in by the
legislation committee of the Spanish Cortes, April 25th, 1821

London 1822

Crim. 18 d

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